

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2024/07

RARO TE MANA O TE UNDER THE	the Education and Training Act 2020
MŌ TE TAKE IN THE MATTER OF	of a charge referred to the Tribunal
I WAENGA I A BETWEEN	COMPLAINTS ASSESSMENT COMMITTEE (CAC) Kaiwhiu Prosecutor
ME AND	MARIA PAPUNI (Authorisation 331354) Kaiurupare Respondent

Nohoanga Hearing	12 September 2024 (on the papers).
Hei Māngai Appearance	E Mok, Meredith Connell, for the CAC J Brown, NZEI Te Ru Roa for the Respondent

DECISION

25 September 2024

Introduction

[1] The Complaints Assessment Committee (**CAC**) has charged the respondent with serious misconduct, or in the alternative, conduct which otherwise entitles the Tribunal to exercise its powers pursuant to s 500 of the Education and Training Act 2020 (**the Act**). The particulars of the charge are that the respondent, on 14 September 2022, pushed Student A (aged eight).

[2] The summary of facts is agreed and is set out below:

Background

1. Maria Papuni (**Ms Papuni**) is a registered teacher. She is 61 years old and was first registered in March 2011. She does not currently hold a practising certificate, her previous practising certificate having expired in June 2023.

Previous disciplinary finding

2. On 20 October 2016, the New Zealand Teachers Disciplinary Tribunal found that Ms Papuni engaged in serious misconduct by using unreasonable force on students on two occasions in 2012 and 2013. The Tribunal censured Ms Papuni, imposed a condition on her practising certificate requiring her to complete a professional development course on behaviour management within 12 months, and ordered that the register be annotated for three years.

Employment at Bailey Road School, previous warnings

3. Between 24 April 2015 and 29 September 2022, Ms Papuni was employed as a teacher at Bailey Road School (**School**), a primary school located in Auckland.
4. Throughout Ms Papuni's time at the School, numerous complaints were made by students, parents and teachers about Ms Papuni's classroom management techniques. Ms Papuni was given multiple verbal warnings. In one complaint in May 2020, another teacher raised concerns that Ms Papuni was "abusive and loud" and "demeaning" towards students. Ms Papuni acknowledged she needed help with learning how to manage stress in the classroom. Ms Papuni agreed to regularly record self-reflections after each class, which she did for three months. She also agreed to attend weekly meetings with the School's Deputy Principal. In four of her reflections, Ms Papuni accepted that she had shouted at students. On one of those occasions, she accepted that she had "scare[d] some children".
5. Ms Papuni received her first formal written warning following an incident on 23 February 2021 where Ms Papuni yelled at students "in a loud voice with a stern tone", causing two students to cry.
6. Following a further incident on 22 March 2022, Ms Papuni received a further written warning and told "you must not swear or belittle a child at all in the classroom nor are you to make physical contact with students". The incident involved Ms Papuni holding a student's jaw up, forcing him to look at her, and her telling him that his work was "bullshit".
7. By the time of the incident below in September 2022 involving Student A, three students had been removed from Ms Papuni's classroom that year due to parental concerns about Ms Papuni's classroom management techniques and her treatment of students.

Incident involving Student A

8. In 2022, Student A (aged 8 years old) was a student in Ms Papuni's class at the School. During the lunch break on 14 September 2022, Student A got into an argument with another student. A teacher at the School, Teacher M, intervened and asked the students to apologise to each other, but Student A refused. Student A remained agitated and continued to 'huff and puff' and swear under his breath.
9. Teacher M took Student A over to stand outside his classroom. She then went into his classroom to ask Ms Papuni to come outside to assist, given that she was his teacher. Ms Papuni did so. Ms Papuni asked Student A to come inside the classroom, but he refused. When Ms Papuni heard that Student A was not willing to apologise to the other student, she told him that he would miss out on kapa haka practice that afternoon because of his behaviour. Upon hearing this, Student A starting crying.
10. Ms Papuni then put her hands on Student A's shoulders and forcefully pushed him to the doorway of the classroom's cloakroom, up a step into the cloakroom, and through the cloakroom. As Ms Papuni pushed Student A through the cloakroom, he tried to grab hold of a fire hydrant cover and collided with the wall. Ms Papuni continued to push him forward. When they reached the classroom doorway, Student A grabbed the door and refused to move.
11. At least three students witnessed Ms Papuni pushing Student A.

12. Teacher M, who also witnessed what had happened, estimated that the level of force Ms Papuni used in respect of Student A was about a seven out of 10, with 10 being the most force a person could use.
13. Ms Papuni went inside the classroom and asked two students to get Student A's older brother. When his brother arrived, Student A still refused to move for several minutes, until he agreed to go with his brother to see Deputy Principal Fia Salesa. Student A reported what Ms Papuni had done. Student A subsequently reported that he was angry at Ms Papuni for pushing him.
14. A photo of the step into the cloakroom and a photo showing the cloakroom and the classroom door are attached at **Tab 1**.

School disciplinary process

15. On 14 September 2022, the School's Principal, Raymond Kelly, initiated an investigation into the incident.
16. On 15 September 2022, Ms Salesa and Anna Voyce, another Deputy Principal, held a meeting with Ms Papuni to discuss what had happened.
17. The School also obtained statements from several students and staff members.
18. On 19 September 2022, Mr Kelly sent Ms Papuni a letter inviting her to a disciplinary meeting on 22 September 2022.
19. This meeting did not take place as Ms Papuni resigned, effective from 29 September 2022.

Mandatory report

20. On 17 October 2022, Mr Kelly submitted a mandatory report to the Teaching Council about the allegation. The matter was referred to a Complaints Assessment Committee (**Committee**) for investigation.
21. On 1 February 2024, the Committee met to consider the mandatory report. Ms Papuni did not attend the meeting.

Ms Papuni's comments

22. In her response to the School, Ms Papuni denied pushing Student A, but accepted ushering him into the classroom, and nudging him at one stage after he grabbed the fire hydrant cover.
23. In a response to the Committee's investigation report, Ms Papuni did not comment on the incident, but advised that she had retired from teaching and did not intend to return to the profession.

[3] The respondent accepts the summary of facts, which she has signed, and that her actions amount to serious misconduct.

[4] The respondent has a history of engaging in this type of conduct. In 2016, the Tribunal found that she engaged in serious misconduct by using force on two students. Since then, the respondent has been subject to multiple verbal and written warnings from her employer regarding shouting and using force on students. This pattern of behaviour has occurred over many years and has continued notwithstanding the respondent undergoing targeted training, counselling and mentoring.

[5] The respondent has now left the teaching profession and has no ambition to practise in the profession again. She accepts the conduct is serious misconduct and that because it is part of a longer pattern of behaviour, cancellation of her registration is appropriate.

Serious misconduct

[6] Section 10(1) of the Act defines “serious misconduct” 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 1 or more students; or
 - (ii) reflects adversely on the teacher’s fitness to be a teacher; or
 - (iii) may bring the teaching profession into disrepute; and
- (b) that is of a character or severity that meets the Teaching Council’s criteria for reporting serious misconduct

[7] Both limbs of the definition (one of the criteria under (a) and also (b)) must be met for the conduct to constitute serious misconduct.

Discussion

[8] There is no doubt in our view that the conduct meets the threshold for serious misconduct. The use of significant prolonged force on a young, primary school aged student was likely to adversely affect the learning or well-being of that student, both in terms of the student’s physical and emotional well-being.

[9] The conduct also reflects adversely on the respondent’s fitness to be a teacher and risks bringing the reputation of the teaching profession into disrepute. It is fundamental that teachers ought to be able to manage and respond to the type of behaviour exhibited by Student A without resorting to the use of force. That is expected of teachers by reasonable members of the public.¹ It is also reflected in the statutory prohibition on the use of force for the purposes of correction or punishment in schools.²

[10] The respondent, by using physical force, also breached her professional obligations under the Code of Professional Responsibility (**the Code**), specifically under s 2.1 (promoting the well-being of learners and protecting them from harm) and s 2.2 (engaging in ethical and professional relationships with learners that respect professional boundaries).

[11] The respondent’s conduct was of a character or severity which meant it engaged rr 9(1)(a) and/or (k) of the Teaching Council Rules 2016 (**the Rules**).

¹ See *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28].

² Education and Training Act 2020, s 98.

[12] Rule 9(1)(a) specifically refers to a teacher using “unjustified or unreasonable physical force on a child or young person”. The use of force on Student A was entirely unjustified and unreasonable in our view.

[13] The use of force on an eight-year-old student, where other appropriate behavioural management techniques were readily available, also risks bringing the teaching profession into disrepute, contrary to r 9(1)(k). It is well-established that reasonable members of the public would expect teachers not to use physical force to manage student behaviour.

[14] In our view, the conduct easily meets the threshold of serious misconduct and warrants the Tribunal exercising its disciplinary powers under s 500 of the Act.

Penalty – principles

[15] It is well-established that the purposes of professional disciplinary proceedings are to ensure public protection, maintain proper professional standards through general and/or specific deterrence, and maintain public confidence in the profession.

[16] The purpose of the professional disciplinary proceedings is not to punish the teacher, although achieving the above purposes may mean the outcome is seen as punitive from a teacher’s perspective.

[17] In *CAC v Fuli-Makaua*,³ the Tribunal commented that cancellation will typically be appropriate in two overlapping categories:

- (a) Where the offending is sufficiently serious that no outcome short of deregistration sufficiently reflects the adverse effect on the teacher’s fitness to teach, or its tendency to lower the reputation of the profession.
- (b) Where the teacher has not taken adequate rehabilitative steps to address his or her conduct. This may indicate a level of apparent ongoing risk that leaves no option but to deregister.

[18] We accept that Ms Papuni’s use of force on Student A and her inability to appropriately manage the student’s behaviour was not a one-off lapse in judgement. It has been a pattern of behaviour which has continued throughout her time practising as a teacher. While we have not factored in the previous incidents into our assessment of her conduct in this case, Ms Papuni has been censured by the Tribunal for similar serious misconduct and expressly warned by two schools about using force on students in the past. In our view, her

³ *CAC v Fuli-Makaua* NZTDT 2017/40, 5 June 2018 at [54].

rehabilitative prospects are low and the risk of engaging in similar conduct going forward remains high.

Decision

[19] For the above reasons, there can be no doubt that Ms Papuni's registration should be cancelled. We can have no confidence that Ms Papuni would not repeat her behaviour if allowed to teach again in the future without significant rehabilitative intervention.

[20] Were Ms Papuni to re-apply for a practising certificate, we would expect the Teaching Council to have regard to this decision and any other disciplinary matters that Ms Papuni has on her record.

[21] While we cannot determine any such application, we would consider Ms Papuni's prospects of successfully obtaining a practising certificate to be difficult given what we have seen in this case and her history. That of course is a decision for the Teaching Council.

Costs

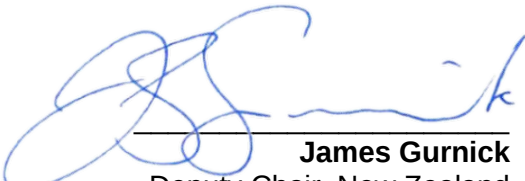
[22] The CAC seeks a contribution towards its costs. It accepts that a lesser award of 40 per cent is appropriate given Ms Papuni has signed an agreed summary of facts reducing the costs of the prosecution and filed a detailed affidavit as to her financial means.

[23] Ms Papuni is 61 years old and currently receives a Work and Income benefit.

[24] We make an order that Ms Papuni pay costs of \$762.74 being 10 per cent of the total costs.

Suppression

[25] While there is no mention of the student's name or identifying particulars in this decision. For the avoidance of doubt an order permanently suppressing the name of Student A and any identifying features in accordance with s 501(6) of the Act and r 34 of the Rules is made.



James Gurnick
Deputy Chair, New Zealand
Teachers Disciplinary Tribunal