

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

DECISION NO: **NZTDT 2024-41**

UNDER THE Education and Training Act 2020

IN THE MATTER of a charge laid by a **COMPLAINTS ASSESSMENT COMMITTEE** against **LANA GAY MACKAY** registered teacher of Hawke's Bay (Registration Number 340544)

Hearing held on the papers on Thursday, 15 May 2025

Tribunal: Jo Hughson (Chairperson),
Louise Arndt and David Spraggs (registered
teachers)

James Edwards (Tribunal Coordinator)

Appearances: Evan McCaughan and Charlotte Best for the
Complaints Assessment Committee

David McLeod, advocate for Ms MacKay

Decision: 18 June 2025

Summary

[1] Ms MacKay was provisionally registered as a teacher in 2002. At the relevant times in 2022, Ms MacKay was employed as an early childhood teacher at Central Hastings Early Learning Centre and then at Swinburn House, an Early Childhood Education Centre in Napier.

[2] Ms MacKay was not teaching at the time of the hearing. Her last practising certificate expired on 30 October 2023.

[3] A Complaints Assessment Committee (CAC) was established to investigate matters about the conduct of Ms MacKay that were the subject of mandatory reports that these ECE Centres had made to the Teaching Council of Aotearoa New Zealand on or around 22 July 2022 and 16 December 2022 respectively. At the conclusion of its investigation, the CAC laid a disciplinary charge. The Charge¹ alleged that:

- (a) On 22 March 2022 at Central Hastings Early Learning Centre, Ms MacKay restrained Child A (aged 2 years) by placing her foot behind Child A's chair; and
- (b) On 15 November 2022, at Swinburn House, Ms MacKay yelled at Child B (aged 3 years) and held Child B's wrists and made him bend over to pick up food off the floor.

[4] These acts were alleged to amount to serious misconduct as defined in section 10 of the Education and Training Act 2020 (the Act). Alternatively, it was alleged the conduct amounted to conduct which otherwise entitled the Tribunal to exercise its powers pursuant to section 500 of the Act.

[5] The hearing proceeded on the papers. Ms MacKay admitted the conduct. The evidence produced by the CAC was an agreed Summary of Facts which Ms MacKay had signed on 3 February 2025².

[6] Written submissions were received from Counsel for the CAC and for Ms MacKay addressing the issues of liability, penalty, and non-publication orders. Annexed to Ms MacKay's submissions was a medical certificate in which her GP wrote in support

¹ Notice of Charge dated 26 August 2024 signed by Lynda Harris, Chair.

² Summary of Facts dated 3 February 2025 signed by Ms MacKay, Mr McLeod and Counsel for the CAC.

of Ms MacKay relating to the stress that these proceedings were having on her, and a statutory declaration made by Ms MacKay on 7 April 2020 relating to her financial means (relevant to fine and costs)

- [7] The Tribunal found that the alleged acts occurred, that they involved Ms MacKay falling short of the standards expected of registered teachers who work in Early Childhood Education settings, and that they amounted to serious misconduct. The Tribunal is making orders of censure, an order directing the Teaching Council to impose three conditions on the next practising certificate that is issued to Ms MacKay (if any) following the date of this decision, annotation of the censure on the register for three years, and an order that Ms MacKay pays \$2,261.58 towards the costs incurred by the CAC in its investigation and prosecution.
- [8] To protect the privacy and wellbeing interests of the learners involved and their families, there is to be a permanent non-publication order in respect the names and identifying particulars of Child A and Child B.
- [9] The names of the Central Hastings Early Learning Centre and Swinburn House may be published. Suppression orders were not sought but in any event, the Tribunal did not consider that naming these Centres would unduly risk identifying Child A and Child B in the collective mind of the general public.

Factual Findings

- [10] The Tribunal made the following findings of fact based on the evidence in the Summary of Facts.

Incident 1: 22 March 2024 – restrained Child A (aged 2 years old) by placing her foot behind Child A's chair

- [11] On 22 March 2022, Ms MacKay was working in the Chrysalis Room at Central Hastings Early Learning Centre. The Chrysalis Room is for children aged between 18 months and 3 years old.
- [12] At lunch time, the other children in the Chrysalis Room sat at the kai table to eat.
- [13] Child A was 2 years old at the time. Staff considered that Child A had noticeable learning difficulties and was possibly on the autism spectrum. Child A did not sit at the kai table and instead continued moving around the room.

- [14] Ms MacKay grabbed Child A and forced him to stay at the table with another teacher. Child A swiped his lunchbox and surrounding items off the table (including other children's food) and started yelling and screaming.
- [15] Ms MacKay placed her leg behind Child A's chair and told the other teacher at the table to place his leg behind Child A's chair in place of hers.
- [16] Another teacher who witnessed the incident advised the acting Centre Manager what had happened. Later that afternoon, Ms MacKay was verbally warned by the Acting Room Leader who explained that was not a practice that was tolerated by the Centre., and that at no point was it okay to hold a child at the table. The Acting Room Leader suggested other techniques which Ms MacKay could use in the future.
- [17] Ms MacKay was offered another position and resigned from the Centre on 28 March 2022.

Teacher's response to CAC

- [18] In response to the CAC's Triage Committee, Ms MacKay accepted that she had placed her foot behind Child A's chair and said she did this to stabilise and support him and prevent him flinging himself backwards. Ms MacKay acknowledged that she was aware that Child A had significant behavioural and developmental issues. She said she understood how placing her foot behind a child's chair could raise concerns and described it as a moment of "*I got it wrong*". Ms MacKay also accepted that this was not best practice. In addition, Ms MacKay accepted that she told another teacher to place his foot behind Child A's chair and said this was to support and stabilise Child A to be seated while eating.
- [19] Ms MacKay stated "*Being a reflective practitioner I completely understand how placing a foot behind a child's chair could raise concerns and I take this critique on board and I have not done this before nor will never [sic] do this again. This was a moment of 'I got it wrong'*".

Incident 2: 15 November – yelled at Child B (3 years old) and held Child B's wrists and made him bend over to pick food up off the floor

- [20] On 15 November 2022, at Swinburn House, Ms MacKay and the head teacher were supervising the older children outside while they were eating.

[21] Throughout this time, Ms MacKay spoke loudly and aggressively to the children, telling them to stay in their seats and to sit up. Other teachers in different areas of the Centre could hear Ms MacKay being loud with the children,

[22] At one point, Child B got up from his seat and ran away. Child B was 3 years old at the time. Ms MacKay asked Child B to return to his seat. Child B went back to where his seat was and then threw food on the ground.

[23] Ms MacKay yelled at Child B and said angrily “*you need to pick that up*”.

[24] Ms MacKay then stood behind Child B, held his hands and pushed him forward in a ‘quite aggressive’ fashion, forcing him to bend at the waist and pick the food off the ground. Child B was crying at the time.

[25] The head teacher called Ms MacKay’s name. Ms MacKay forced the child to bend over a second time to pick up the rest of the food and then let go of his hands.

[26] Ms MacKay said to the head teacher that she knew what she did was probably “*a bit over the top*” but that Child B had purposely thrown the food down in front of her. Ms MacKay then told Child B to sit, which he did.

[27] The head teacher spoke to Ms MacKay a second time after her lunch break. Ms MacKay again said she knew she was over the top with Child B but that he had purposely thrown his food down in front of her and he needed to learn that was not okay.

[28] When the head teacher said Ms MacKay had been loud throughout kai time, Ms MacKay said her ear was blocked so she was talking really loudly. The head teacher told Ms MacKay that she had been loud, very angry and aggressive during kai time to which Ms MacKay responded: “*I didn’t want to be there. I was dreading having to go out there today*”. Ms MacKay told the head teacher she was starting to think the job was not for her.

[29] The head teacher reported what happened to the Centre Manager. The Centre Manager then reported the incident to the Chief Executive Officer of Swinburn House who engaged Grow HR to investigate the incident.

[30] Ms MacKay was suspended while the investigation took place. She resigned from Swinburn House on 9 December 2022.

Teacher’s response to CAC

[31] Ms MacKay did not comment in relation to the allegation that she yelled at Child B and held Child B's wrists and made him bend over to pick food up off the floor.

[32] On 26 January 2023 Ms MacKay sent a letter to the Teaching Council stating "*For many reasons and to avoid further stress and unhappiness I have left the ECE teaching profession and I have no intention to return to any ECE teaching position in the future. I have no intention to respond to any investigations or allegations made against me.*"

[33] Ms MacKay did not attend the CAC's meeting on 18 July 2024 when it considered the mandatory reports.

Factual allegations proved

[34] It was for the CAC to prove the Charge on the balance of probabilities.

[35] The Tribunal was satisfied that the agreed facts were sufficient to prove the factual allegations in the Charge relating to the incidents in question.

[36] Although Ms MacKay accepted that her conduct met the "*threshold of serious misconduct*"³ this was a question for the Tribunal. The Tribunal went on and assessed objectively whether her conduct was serious misconduct or was conduct which otherwise entitled it to exercise its disciplinary powers.

Legal Principles - Liability

[37] Serious misconduct is defined in section 10 of the Act as:

Serious misconduct means conduct by a teacher –

(a) that-

(i) adversely affects, or is likely to adversely affect, the wellbeing 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.

³ Respondent Submissions regarding serious misconduct and penalty orders dated 7 April 2025 at [1.3(b)].

- [38] This test is conjunctive⁴. That means that at least one of the criteria under limb (a), as well as limb (b), must be met. If one (or more) of the criteria under limb (a) is met, but the conduct is not of a character or severity that meets the Teaching Council's reporting criteria for serious misconduct, then the conduct will amount to misconduct (simpliciter).
- [39] In relation to limb (a)(i) and the impact of the teacher's conduct on the well-being or learning of a student, "*likely*" means that the risk or possibility is one that must not be fanciful and cannot be discounted⁵.
- [40] Previous Tribunal decisions demonstrate that "*fitness to be a teacher*" in limb (a)(ii) requires as a focus, whether the teacher's conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical, and legal standards and the departure from those standards must be viewed with disapproval by a teacher's peers or by the community⁶.
- [41] The reasonableness of the standards applied may take account of not only usual professional teacher practice but the interests of learners and the expectations of their parents/whānau, and community expectations. For that reason, the views of all members on the Tribunal panel, both teacher members and the lay member (usually the Chairperson), will inform the view taken by the Tribunal on whether the conduct reflects adversely on the teacher's fitness to be a teacher.
- [42] As for conduct that may bring the teaching profession into disrepute, the question to be asked by the Tribunal is whether reasonable members of the public, informed of all the facts and circumstances, could reasonably conclude that the reputation and good standing of the teaching profession would be lowered by the behaviour of the teacher concerned.⁷
- [43] In terms of the Teaching Council's criteria for reporting serious misconduct (limb (b)), broadly, a teacher's employer must immediately report to the Teaching Council if the

⁴ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141, 27 February 2018, at [64].

⁵ *CAC v Marsom* NZTDT 2018/25 adopting the meaning of "*likely*" in the name suppression context as described by the Court of Appeal in *R v W* [1998] 1 NZLR 35 – "*real*", "*appreciable*", "*substantial*" and "*serious*" are qualifying adjectives for "*likely*".

⁶ *CAC v Crump* NZTDT 2019/12 at [42].

⁷ *CAC v Teacher C* NZTDT 2016/40 28 June 2018 at [203] citing *Collie v Nursing Council of New Zealand* [2001] NZAR 74 (HC) at [28]. This test was applied in *Teacher Y v Education Council of Aotearoa New Zealand*, above fn. 5 at [48].

employer has reason to believe the teacher has committed a serious breach of the Code of Professional Responsibility. The examples of conduct that is of the nature and severity to amount to a serious breach of the Code are set out in rule 9 of the Teaching Council Rules 2016.

- [44] In this case, the CAC relied on rules 9(1)(a) and 9(1)(k). Rule 9(1)(a) relates to using unjustified or unreasonable physical force on a child or young person. Rule 9(1)(k) is a “*catch all*” provision⁸ in relation to both acts and omissions that bring or are likely to bring the teaching profession into disrepute. The misconduct described in rule 9 may be a single act or several acts forming part of a pattern of behaviour, even if some of the acts when viewed in isolation are minor or trivial⁹.
- [45] Section 24(1) of the Act provides that no teacher shall “*use force, by way of correction or punishment, toward a child enrolled at or attending an early childhood service*”.
- [46] In *CAC v Teacher*¹⁰ the Tribunal commented:

We repeat as we have said in a number of cases in the past that the use of physical force – even at the lower level such as evident in this case – is unacceptable in New Zealand schools, and that any teacher who uses physical force contrary to s [24] puts his or her status as a teacher in peril.

Relevant professional standards

Code of Professional Responsibility

- [47] The Tribunal assessed Ms MacKay’s conduct against the relevant standards of ethical and professional conduct set out in the Code of Professional Responsibility, and as set or maintained by previous cases involving similar conduct.
- [48] While directly relevant to this assessment¹¹, the obligations set out in the Code are not determinative of whether there has been serious misconduct or conduct which

⁸ *Teacher Y v Education Council of New Zealand* [2019] NZCA 637 at [69].

⁹ Rule 9(2).

¹⁰ *CAC v Teacher* NZTDT 2014/49, 20 May 2014.

¹¹ *CAC v Stokes* [2021] NZTDT 34 at [63].

otherwise justifies the Tribunal exercising its disciplinary powers. Those are matters for the Tribunal to determine.

[49] Clause 1 sets the expectation that teachers are expected to demonstrate a high standard of professional behaviour and integrity (clause 1.3). By acting with integrity and professionalism, teachers, and the teaching profession, maintain the trust and confidence that learners, whānau, and the wider community place in them to guide their children and young people on their learning journey and keep them safe.¹²

[50] Clause 2 of the Code sets the expectation that teachers will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm (clause 2.1); and engaging in ethical and professional relationships with learners that respect professional boundaries (clause 2.2).

[51] There are several previous cases where the Tribunal has considered conduct of the nature the Tribunal has reviewed in relation to Ms Mackay, and which have resulted in adverse disciplinary findings. The CAC referred to three of them. These cases maintain the professional standards that are expected of teachers in terms of appropriate interactions with and conduct towards early childhood learners¹³. Reference is made to these cases in the penalty part of this decision. Suffice to say at this point that these cases recognise that use of force by a teacher towards an early childhood learner typically amounts to serious misconduct, and while it may or may not amount to physical abuse, it is behaviour likely to bring discredit to the teaching profession.

[52] In *Risuleo*¹⁴ the Tribunal noted that in some cases the degree of force used sits easily within a common understanding of physical abuse and sometimes the use of force results in humiliation and may amount to psychological abuse and that “*underlying both of these is the unique position of power and trust that a teacher holds*”. Further, “*section [24] 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*

¹² CAC v Teacher Z NZTDT 2020/19 at [26].

¹³ CAC v *Risuleo* NZTDT 2018-8, 17 September 2018; CAC v *Chen* NZTDT 2020-54; CAC v *Ross* NZTDT 2023-82.

¹⁴ Above fn. 12

committed in the community. Therefore, teachers must be careful not to abuse the position of authority that they have in a classroom”.

[53] The Tribunal was guided by these comparable cases but recognised that ultimately, it was required to consider Ms MacKay’s case on its own facts.

Findings on the Charge

[54] The Tribunal considered the evidence and the CAC’s submissions carefully and concluded as follows:

- (a) Ms MacKay’s conduct on both occasions adversely affected, or was likely to adversely affect, the well-being or learning of Child A and Child B. Ms MacKay forced Child A to sit at the kai table and then refused to let him get up through the use of physical restraint (placing her foot behind the child’s chair to stop the child moving off the chair) She should have found strategies to encourage Child A to come to the table willingly, rather than behave in a way that caused him to be trapped at the table and upset. Child B also became upset by Ms MacKay’s use of force against him. Ms MacKay failed to deal with him in an appropriate and professional manner. Ms MacKay’s actions would “*likely*” have adversely affected the wellbeing of each student at least to some extent, and even if only for a short time. Limb (a)(i) is met in respect of both incidents.
- (b) Ms MacKay’s conduct in both incidents, particularly the incident with Child B, reflect adversely on her fitness to be a teacher. Section 24 expressly prohibited her from using force against these children to correct their behaviour. The Tribunal was of the view that in both cases, Ms MacKay used unreasonable amounts of force because she was frustrated by the behaviour of these young children. She did not use force to protect herself, the children, or any other children from danger. Teachers who are fit to teach early childhood learners must be capable of responding to misbehaviour in ways that do not involve the use of force or the exertion of power and control over children. Reasonable members of the public would expect this, in the Tribunal’s view. Limb (a)(ii) is also met for these reasons.
- (c) For similar reasons, Ms MacKay’s conduct may bring the teaching profession into disrepute. There were two incidents involving Ms MacKay’s rough handling of children and this raises questions about

whether this was a pattern of behaviour, rather than isolated incidents. Limb (a)(iii) is met in respect of each incident.

- (d) In terms of rule 9, Ms MacKay's use of physical force on Child A and Child B was both unjustified and unreasonable in the circumstances. Ms MacKay was plainly acting out of frustration on both occasions. There was no justification for forcing Child A to sit at the kai table and certainly not for forcing him to remain sitting at the table when he swiped items off the table. Likewise there was no justification for forcing Child B to pick up the food he had thrown on the floor. Ms MacKay should have been able to find alternative ways to deal with Child B's misbehaviour. Her conduct on each occasion has brought the teaching profession into disrepute. For those reasons two of the reporting criteria in rule 9 are met (rules 9(1)(a) and (k)). The second limb of the definition of serious misconduct is met.
- (e) Findings of serious misconduct in this case are consistent with previous cases that have been decided by the Tribunal, and are justified and appropriate. The incident with Child B is similar to the behaviour in *Risuleo* where the teacher dealt with a misbehaving 5-year-old by walking over to the child, grabbing the child's arm and pulling the child towards him. This caused the child to fall on the floor and hit his head, with the result that the child was crying and upset. The incident with Child B is also similar to the behaviour reviewed in *Chen* which involved a pre-school teacher forcefully pulling arms of children on two separate occasions.
- (f) In relation to Child A Ms MacKay's use of unreasonable and unjustified force was for the purposes of correction and was therefore a breach of section 24(1). The Tribunal had no doubt that this behaviour was sufficiently serious to attract discipline.
- (g) When Ms MacKay's behaviour towards each of Child A and Child B is considered separately, and then together, there has been serious misconduct.

[55] For those reasons, the Charge is established.

Penalty

[56] Having made adverse findings, the Tribunal was entitled to exercise its powers pursuant to section 500 of the Act. The Tribunal went on to consider the appropriate penalty outcome. The Tribunal could do one or more of the things set out in section 500(1).

[57] It is well established that the primary purposes of disciplinary penalties under the Act is to maintain professional standards (through general and/or specific deterrence) and the public's confidence in the teaching profession, and to protect the public through the provision of a safe learning environment for students¹⁵.

[58] The Tribunal accepted as the appropriate sentencing principles those contained in *Roberts v Professional Conduct Committee*¹⁶ where Collins J identified the following eight factors as relevant whenever an appropriate penalty is being determined. In particular, the Tribunal should consider what penalty:

- (a) Most appropriately protects the public and deters others;
- (b) Facilitates the Tribunal's important role in setting professional standards;
- (c) Punishes the practitioner (although this is not a primary purpose¹⁷);
- (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 in the circumstances; and
- (h) Looked at overall, is the penalty which is "fair, reasonable and proportionate in all the circumstances".

[59] The Tribunal considered the three previous Tribunal cases which the CAC submitted were comparable. These cases show that the penalties imposed in broadly similar cases are predominantly censure, conditions on practice or on any subsequent

¹⁵ As discussed in *CAC v McMillan* NZTDT 2016/52.

¹⁶ [2012] NZHC 3354 at [44]-[51].

¹⁷ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 (SC) at [128].

practising certificate, annotation of any censure and/or conditions on the register of teachers, and costs.

[60] In this case the CAC sought orders of censure, annotation of the register for 2 years, conditions to apply to any further practising certificate, and an order of costs. The conditions sought were that for 2 years Ms MacKay must provide a copy of this decision to her current teaching employer and to any prospective teaching employer; and for 1 year, a condition that Ms MacKay must practise under the guidance of a mentor approved by the Teaching Council (which may also stipulate the form of mentorship and the provision of mentorship reports or updates) and that she must undertake any further education required by the Teaching Council on the subject of positive behavioural guidance.

[61] Ms MacKay accepted that these were appropriate outcomes although she sought annotation of the register for 2, rather than 3, years.

Ms MacKay's evidence and submissions as to penalty

[62] Ms MacKay did not file a reflective statement because, her advocate indicated, she has no intention of returning to the “*early teaching profession*”. Nor did Ms MacKay file any character references or evidence of any rehabilitative steps she has taken relevant to the causes of her behaviour the Tribunal has reviewed.

[63] Ms MacKay filed a medical certificate from her GP¹⁸ who wrote of the significant impact these proceedings have had on her.

[64] Relevant to orders of fine and costs, Ms MacKay produced a statutory declaration of her financial means which evidenced that she has very limited means. As of the date she made her declaration (7 April 2025) Ms MacKay was unemployed and on a Job Seeker benefit which was her sole income. She declared she owned a vehicle, her monthly expenses almost equalled her monthly benefit income, and she had credit card debts.

Relevant factors

[65] The Tribunal did not consider there were any aggravating features which warranted a more serious penalty than the combination of penalty orders sought by the CAC.

¹⁸ Dated 30 January 2025.

[66] Ms MacKay's most recent practising certificate expired on 30 October 2023. Her intention not to teach again, was noted but minimal weight was placed on that.

[67] The reality is that there have been two separate incidents of Ms MacKay using inappropriate force on two young children, over a period of around 8 months, at two different ECE facilities. This suggests a pattern of behaviour and the Tribunal accepted the CAC's submission that this indicated there may be underlying concerns about Ms MacKay's fitness to practice as a teacher.

[68] That said, as the CAC identified:

- (a) There was no evidence Ms MacKay had any previous disciplinary findings since she was provisionally registered in 2013.
- (b) Although her engagement with the CAC was relatively limited, Ms MacKay has at times shown insight into the inappropriateness of her conduct. As noted, in relation to Child A, Ms MacKay acknowledged to the CAC that she had "got it wrong". In respect of the incident involving Child B, Ms MacKay showed some limited insight into her conduct when the head teacher first spoke to her about the incident.
- (c) Ms MacKay accepted a Summary of Facts which indicated she had a certain level of insight, and remorse.

Findings on Penalty

[69] The Tribunal considered the relevant sentencing principles, the factors outlined above, and the comparative cases. The Tribunal was satisfied that it was appropriate to exercise its discretion under section 500 and impose a formal penalty.

[70] The Tribunal accepted the CAC 's submission that the conduct in this case is not so grave as to warrant cancellation of Ms MacKay's registration. That is not to say that the conduct was not seriously concerning. A message needs to be sent to Ms MacKay and to members of the early childhood teaching profession that such conduct is no longer acceptable in the profession.

[71] The Tribunal considered that the least restrictive penalty which meets the seriousness of the case and discharges the Tribunal's obligation to the public and the teaching profession is a censure to express the Tribunal's disapproval of the conduct which occurred in this case (section 500(1)(b)), annotation of the censure on the register for three years (section 500(1)(e)) and a direction to the Teaching

Council to impose conditions on any subsequent practising certificate that may be issued to Ms MacKay (section 500(1)(j)). As discussed below, a costs order is also being made.

[72] In terms of conditions, the Tribunal directs the Teaching Council to impose the following conditions:

- (a) For a period of three years from the date of the first practising certificate issued to Ms MacKay following the date of this order, Ms MacKay must provide a copy of this decision to all prospective early childhood education and/or teaching employers, including any relief teaching employers.
- (b) For a period of one year from the date of the first practising certificate issued to Ms MacKay following the date of this order, at Ms MacKay's expense, she must practice under the guidance of a mentor approved by the Teaching Council. The mentoring is to focus on ensuring that Ms MacKay's practice accords with the standards of the teaching profession; and the mentor is to provide quarterly reports to the Manager, Professional Practice at the Teaching Council; and
- (c) Ms MacKay must undertake training in positive behavioural management (such as completion of a course like Prevent Teach Reinforce) and complete this to the satisfaction of the Manager, Professional Practice at the Teaching Council within one year of the date of the first practising certificate that the Council may issue to her following this decision .

Costs

[73] It is usual for an award of costs to be made against a teacher once a charge is established. When considering the appropriate quantum of costs, the Tribunal must take account of the need for the teacher who has come before the Tribunal to make a proper contribution towards the costs that have been incurred. As has been said in previous decisions of the Tribunal, the teaching profession as a whole should not be expected to fund all the costs of the disciplinary regime under the Act.

[74] In general, the starting point for costs orders is 50% of the CAC's (and the Tribunal's) costs. In this case the CAC sought a (reduced) costs order of 40% noting the statement in the Tribunal's Practice Note of 1 April 2022 to the effect that without limiting the Tribunal's discretionary decision-making, in most cases where a teacher

has admitted a charge and fully cooperated in bringing the matter to an end in an expedient way (as Ms MacKay has), the costs contribution that has been ordered has usually been in the region of 40%.

- [75] Ms MacKay requested the Tribunal to reduce her costs contribution to 0% having regard to her having accepted responsibility for her misconduct and agreed to the matter being dealt with on the papers; and because she has “*no ability to meet any costs order*”.
- [76] The Tribunal considered whether to make orders that Ms MacKay contributes to the CAC’s costs in undertaking its investigation and prosecution functions (section 500(1)(h)), and to the Teaching Council’s costs associated with the Tribunal’s hearing (section 500(1)(i)).
- [77] Counsel for the CAC provided a schedule of the CAC’s costs. These were indicated as being \$5,653.94 excluding GST. The Tribunal considered that these costs are entirely reasonable.
- [78] The Tribunal considered that while Ms MacKay’s means may currently be limited, it cannot be said that she will have no ability to pay costs in the future. Her registration is not being cancelled, and it remains open to her to apply for a practising certificate.
- [79] Taking all factors into account, the Tribunal decided that it would be fair that Ms MacKay be ordered to contribute to the CAC’s costs as otherwise the teaching profession as a whole will have to meet all the costs associated with proceedings which have been of Ms MacKay’s own making. Accordingly, Ms MacKay is being ordered to pay a 40% contribution towards the costs incurred by the CAC, being the sum of \$2,261.58. Ms MacKay may enter a payment arrangement with the Teaching Council in respect of these costs but that is entirely a matter for Ms MacKay to take up with the Teaching Council.
- [80] No estimate was provided of the Teaching Council’s costs, and the CAC did not seek an order in respect of these costs, For those reasons, Ms MacKay is not being ordered to contribute to those costs.

Non-publication orders

Ms MacKay – name not suppressed

[81] Ms MacKay did not seek name suppression. Her name may be published in connection with these proceedings.

Child A and Child N – names permanently suppressed

[82] Prior to the hearing interim orders were made suppressing the names of Child A and Child B. The CAC applied for permanent orders. This application was not opposed by Ms MacKay.

[83] The Tribunal weighed the competing interests and concluded that it is proper to permanently suppress from publication the names of these children to protect their privacy and wellbeing interests (and the privacy of their families). There is no public interest in them being publicly identified.

[84] Accordingly, there are to be permanent non-publication orders in respect the name and identifying particulars of Child A and Child B respectively.

ECE Centres– names not suppressed

[85] Non-publication orders were not sought in respect of the names of Ms MacKay's employers who made the mandatory reports.

[86] The Tribunal concluded that it would not be proper to suppress the names of these ECE Centres. There is a public interest in members of the public knowing the names of the Centres where Ms MacKay worked at the material times. Further, the Tribunal did not consider that naming these Centres would unduly risk the identification of Child A and Child B in the collective mind of the general public.

[87] The Tribunal considered that any member of the public including members of the teaching profession who read this decision will learn that these incidents involved a teacher who no longer works at either Centre, and that the Centres dealt with the incidents professionally and entirely appropriately; and those matters have now concluded.

Conclusion and Orders

[88] The Charge is established. Ms MacKay is guilty of serious misconduct

[89] The Tribunal's formal orders under the Education and Training Act 2020 are:

- (a) Ms MacKay is censured for her serious misconduct pursuant to section 500(1)(b).
- (b) Annotation of the censure on the register for three years pursuant to section 500(1)(e).

[90] Pursuant to section 500(1)(j) the Teaching Council is directed to impose the following conditions:

- (a) For a period of three years from the date of the first practising certificate issued to Ms MacKay following the date of this order, Ms MacKay must provide a copy of this decision to all prospective early childhood education and/or teaching sector employers, including any relief teaching employers.
- (b) For a period of one year from the date of the first practising certificate issued to Ms MacKay following the date of this order, at Ms MacKay's expense, she must practice under the guidance of a mentor approved by the Teaching Council. The mentoring is to focus on ensuring that Ms MacKay's practice accords with the standards of the teaching profession; and the mentor is to provide quarterly reports to the Manager, Professional Practice at the Teaching Council; and
- (c) Ms MacKay must undertake training in positive behaviour management (such as completion of a course like Prevent Teach Reinforce) and complete this to the satisfaction of the Manager, Professional Practice at the Teaching Council within one year of the date of the first practising certificate that the Teaching Council may issue to her following this decision.
- (d) Ms MacKay is to pay 40% of the CAC's investigation and prosecution costs pursuant to section 500(1)(h) in the sum of \$2,261.58
- (e) There are to be permanent orders under section 501(1)(6) prohibiting from publication of:
 - a. the name and identifying particulars of Child A; and
 - b. the name and identifying particulars of Child B.

**Dated at Wellington this
day of 18th day of June
2025**



Jo Hughson
Chairperson

NOTICE

- 1 The teacher who is the subject of a decision by the Disciplinary Tribunal made under section 500 of the Education and Training Act 2020 may appeal against that decision to the District Court (section 504(1)).
- 2 The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 500 (section 504(2)).
- 3 An appeal under section 504 must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows (section 504(3)).
- 4 Clause 5(2) to (6) of Schedule 3 applies to an appeal under section 504 as if it were an appeal under clause 5(1) of Schedule 3.