

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2024/20

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| RARO TE MANA O TE UNDER THE | the Education and Training Act 2020 (the Act) |
| 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 | <div></div> <div></div> |
| | Kaiurupare Respondent |

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|-------------------------|--|
| Nohoanga Hearing | 12 February 2024 |
| Hei Māngai Appearance | F Biggs, for the CAC |
| | Respondent, not represented |
| Tribunal | C Garvey (Deputy Chair), R Brown and L Evans |

DECISION ON LIABILITY, PENALTY and NON-PUBLICATION

20 March 2025

Introduction

[1] (the respondent)¹ faces a disciplinary charge relating to conduct over a period of about ten days while he was experiencing a manic episode in the context

¹ Because non-publication orders are made we refer to ‘the respondent’ to avoid unnecessary redactions when this decision is published on the Teaching Council website. The same approach is taken to the respondent’s employer at the relevant time (“the school”).

of bipolar affective disorder. The respondent had newly arrived in New Zealand and circumstances conspired to mean he commenced in a teaching role with no time to be orientated to the New Zealand education system, and with no local family or professional medical support.

- [2] The parties filed an Agreed Summary of Facts addressing each of the particulars of the charge. The Tribunal also received written submissions on behalf of the Complaints Assessment Committee (CAC) and material from the respondent including references, and a copy of an Impairment Report. The hearing was scheduled to be conducted by audio visual link if Mr [REDACTED] wished to attend and be heard as to penalty. The Tribunal commenced in that manner with counsel for the CAC present but proceeded as a hearing on the papers in the respondent's absence.²

The Notice of Charge

- [3] The respondent's employer [REDACTED] (the school) made a Mandatory Report to the Teaching Council on or about 22 March 2023. Following investigation by the CAC a notice of charge was laid and an amended notice of charge was issued on 3 July 2024.
- [4] The particulars of the Amended Notice of Charge read as follows:

Particulars of the Charge

- 1 The CAC charges that [REDACTED] registered teacher, previously of [REDACTED], between or around 9 March 2023 to on or around 20 March 2023 ...displayed:

- a. Unprofessional behaviour including but not limited to:
 - i. drinking alcohol at school;
 - ii. swearing at a student;
 - iii. using inappropriate language and behaviour;
 - iv. harassing a woman at school; and

² This matter was scheduled for a hearing in late 2024 but unfortunately due to administrative oversight that hearing did not proceed, and the matter was rescheduled for hearing on 12 February 2025. Notice was given to both parties in writing and acknowledged by Mr [REDACTED]

v. accessing adult content off a school account.

- 2 The conduct alleged in paragraph 1.a separately or cumulatively, amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 and any or all of rule 9(1)(k) and/or rule 9(2)(b) of the Teaching Council Rules 2016.
- 3 In the alternative the conduct outlined in paragraph 1.a. separately or cumulatively, amounts to misconduct otherwise entitling the Disciplinary Tribunal to exercise its powers pursuant to section 500 of the Education and Training Act 2020.

Agreed Summary of Facts

- [5] The Agreed Summary of Facts was signed by the parties in July 2024. The following summary is taken from that document and details in the Impairment Report prepared for the Teaching Council by Sally Thomas, Clinical Neuropsychologist.³
- [6] The respondent is an overseas trained teacher and first registered with the Teaching Council in October 2022. He arrived in New Zealand on 8 March 2023 and commenced work at the school on 9 March 2023. The respondent's arrival in New Zealand was delayed, with his visa being granted on 3 March 2023.
- [7] The respondent has a history of Bipolar Affective Disorder (type 1). He received regular treatment for this while living overseas and had previously experienced manic episodes leading to hospitalisation⁴. The respondent disclosed the nature of his medical condition to the principal at the school a few weeks prior to coming to New Zealand. When he arrived in New Zealand:

[The respondent] did not have appropriate accommodation or a psychiatric care plan in place to manage his bipolar condition. Whilst he was still taking his prescribed mood stabiliser on a daily basis, he did not augment this with antipsychotic medication to appropriately manage the heightened stress of transitioning to a new country.⁵
- [8] The respondent taught for a total of seven days at the school. During this time his mental condition deteriorated and manifested in the conduct outlined in the charge. In short the incidents occurring over a total of seven days teaching in the school included the respondent:

³ Impairment Report 27 November 2023, Sally Thomas.

⁴ Referred to in the Impairment Report, above n3.

⁵ ASOF at [6], in reliance on the Impairment Report (above n3).

- (a) drinking alcohol (one beer) on school grounds on two occasions;
- (b) saying “*Don’t be a fuckface*” to a student in front of other students;
- (c) making inappropriate comments involving innuendo about a female parent and similar comments to two female teachers;
- (d) sharing information about his personal life that made other staff feel uncomfortable;
- (e) making inappropriate comments to other teachers including about the use of violence and separately, of a homophobic nature;
- (f) unexpectedly removing his shirt to show staff his back tattoo on two occasions; and
- (g) accessing pornography on a website from his personal mobile phone using his school account during school hours.

[9] At the instigation of school staff, the respondent was assessed by the Mental Health Crisis Assessment Team and underwent a period of inpatient treatment under a compulsory treatment order. The school filed a Mandatory Report and subsequently dismissed the respondent, who has since returned overseas.

[10] The respondent agreed to the Teaching Council’s voluntary Impairment Process and responded to the Mandatory Report. An impairment report was prepared by Sally Thomas, Consultant Clinical Psychologist dated 27 November 2023. Ms Thomas recorded that the respondent “*is insightful about the contributors to his psychiatric decline and associated behaviour.*” The report concludes that the respondent’s conduct was a consequence of his disorder and indicates the importance of him arranging therapeutic support should he relocate for work in future:

If [the respondent] returns to a teaching role in NZ in the future, it is essential the employer is informed of [the respondent’s] psychiatric condition so additional support can be put in place, especially during the early employment/resettlement stage when stress is heightened, which at the minimum would include oversight of [the respondent] in some capacity i.e. regular check-ins with a colleague to support [the respondent’s] familiarisation with the NZ and education context, help mitigate potential issues, and monitor his stress level and coping ability.

[11] The respondent admitted the incidents of swearing, consuming alcohol and making comments that made others uncomfortable as described but that the “*homophobic*

comments do not reflect his views on the LGBT community when he is stable.” He admitted he had accessed pornography but denied doing so at school other than inadvertently when he opened his internet browser for the first time during the day.⁶

Liability-Penalty and Submissions

[12] The test for serious misconduct is set out under section 10(1) of the Act 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 professional into disrepute; and
- (b) That is of a character or severity that meets the Teaching Council’s criteria for reporting serious misconduct.

[13] The CAC submits that the respondent’s behaviour separately or cumulatively meets both limbs of the definition or alternatively misconduct simpliciter, which requires only that one of the limbs of s10(1)(a) is engaged.⁷

[14] The CAC relies primarily on the standards set out in the Teaching Council Code of Conduct| Ngā Tikanga Matatika, in particular:

- (a) Clause 1.2 – that teachers will engage in professional, respectful and collaborative relationships with colleagues;
- (b) Clause 1.3, that teachers will demonstrate a high standard of professional behaviour and integrity;
- (c) Clause 2.1 that teachers will work in the best interests of learners by promoting the wellbeing of learners.

[15] To summarise comprehensive and helpful submissions, the CAC points to the use of the use of unprofessional, disrespectful and inappropriate and language and

⁶ Above n4 at [27] to [31].

⁷ *Evans v Complaints Assessment Committee* CA 672/2020; [2021] NZCA 66.

submits that the respondent's behaviour was such as to damage the trust and confidence that students, whānau and colleagues could have in him as a teacher and in the profession.

[16] The CAC referred the Tribunal to several comparator cases each involving a type of the conduct for which the respondent is charged. None of these apparently involved a teacher whose conduct was affected by a recognised psychiatric disorder, meaning that any comparison is necessarily tempered by that distinction. A brief summary of some of the cases referred to by the CAC follows:

- (a) In *Whiu*⁸ the teacher used offensive and abusive language including swearing at a student with whom he was frustrated because of an interchange during the lunch break. The outburst was in front of other students and found by the Tribunal to reflect adversely on the teacher and bring the profession into disrepute.
- (b) The issue of consuming alcohol on school grounds (outside of a sanctioned event) was considered in *CAC v Osborne*.⁹ The teacher drank alcohol and attempted to dispose of the evidence but admitted her behaviour the following day. The conduct was seen as lowering the reputation of the profession and was in breach of the obligation under the Code to maintain public trust and confidence in the profession. There was no evidence of impact on students, but the conduct was found to reflect on the teacher's fitness.
- (c) The Tribunal has also considered access to pornographic material by a teacher on a number of occasions. The circumstances determine whether this will be viewed adversely such as if the material meets the definition of "objectionable"¹⁰, a school device is used during school hours or at school, or the accessing of pornographic content occurs in school time even if on a personal device. See e.g. *CAC v Teacher A*.¹¹
- (d) Addressing the respondent's comments which led to his colleagues feeling uncomfortable because of their sexual undertones, the CAC refer to *CAC v Teacher M*.¹² The teacher sent messages to a trainee teacher about massages and drinking alcohol together which the younger trainee found

⁸ *Complaints Assessment Committee v Whiu* NZTDT 2018/86

⁹ *Complaints Assessment Committee v Osborne* NZTDT 2018/33.

¹⁰ Under the Films Videos and Publications Classifications Act 1983.

¹¹ *Complaints Assessment Committee v Teacher A* NZTDT 2018/16.

¹² *Complaints Assessment Committee v Teacher M* NZTDT 2018/34.

extremely uncomfortable. The Tribunal considered that the behaviour amounted to serious misconduct, showing poor professional judgment that reflected on M's fitness and that it brought the profession into disrepute.

- [17] Given the range of conduct exhibited by the respondent during a short period of time the CAC submits that it shows a pattern of inappropriate behaviour that was “*overbearing, aggressive and reckless*” and at least cumulatively meets the criteria for sexual misconduct.
- [18] Detailed submissions were made outlining how the respondent's conduct engaged each limb of s10(1)(a). In short, the CAC submits that the actual or likely impact on student well-being arises from swearing at a student in front of others, and the risk of being observed drinking alcohol at school and of viewing pornography during school hours (s10(1)(a)(i)). With regard to fitness the CAC submits that the conduct in all respects reflects adversely, through not managing his disorder, and “*a tendency to act aggressively, inappropriately and impulsively towards a student and staff.*” The respondent's conduct with colleagues is submitted to be a failure to engage in the type of professional and respectful relationships with colleagues that the Code requires (s10(1)(a)(ii)). Finally with regard to disrepute the CAC submits that reasonable members of the public have an expectation that teachers will act professionally and will “*appropriately manage health conditions that may undermine their ability to meet their professional standards, or alternatively to step away from school if their condition is not being appropriately managed*” (s10(1)(a)(iii)).
- [19] With regard to the second limb of the test for serious misconduct the charge relies on r9(1)(k) which refers to an act or omission that is likely to bring the teaching profession into disrepute. The CAC essentially relies on the submissions made in relation to the first limb and submits that the pattern of behaviour over a short period of time would lower the good standing of the teaching profession.
- [20] The respondent has acknowledged that his conduct amounts to serious misconduct.

Liability - Findings

- [21] The Tribunal agrees that cumulatively the respondent's conduct amounts to serious misconduct, meeting each of the limbs of s10(1)(a) and being conduct that is likely to bring the profession into disrepute. It is relevant that this occurred in the context of a deterioration in his mental state culminating in a hospital admission for compulsory treatment. The Tribunal does not have the evidence or the expertise to determine whether the respondent was aware that he was about to experience a

manic episode or the extent to which he then was competent to control his disinhibited behaviour. The Impairment Report outlines steps that should be taken by the respondent in future, and support an expectation that planning for the upheaval of moving and commencing a new job including arranging for medication and health support would have been appropriate.

- [22] The main grounds on which the Tribunal considers an adverse finding is warranted is that the respondent's conduct did adversely affect his colleagues and students. Meeting professional standards means a teacher will take appropriate steps to avoid personal circumstances preventing them from practising in accordance with the expectations set out in the Code. Fundamentally, managing personal factors including health issues is necessary to show due regard for maintaining professional relationships with students and working respectfully alongside colleagues. Teaching is a public-facing profession and the Code deliberately sets high standards to reflect the important role teachers have as educators and role models.

Penalty

- [23] Having made an adverse finding, the Tribunal may impose penalties under s500 of the Act. The principles of penalty are well established, being to provide for the protection of the public, and the maintenance of professional standards and public confidence in the teaching profession. The penalty imposed should be fair, reasonable and proportionate, and comparable to those imposed in similar cases. The Tribunal should impose the least restrictive penalty that is appropriate in the circumstances.
- [24] The short time that the respondent was in New Zealand means there is a lack of information about his teaching practice, but the references provided from overseas colleagues and employers speak highly of him. The respondent's engagement with the impairment process together with his cooperation with the Teaching Council and the CAC support that a rehabilitative approach is appropriate.
- [25] The CAC acknowledges that there is a "clear nexus" between the respondent's conduct and the decline in his medical condition. The CAC refers to personal mitigating factors that are present: that the respondent has cooperated with the CAC, accepted his conduct and appears to show insight, and has provided positive references and submits that the following penalty is appropriate:

- (a) censure.

- (b) that the respondent provides a copy of the Tribunal's decision to a prospective employer and then satisfactory written evidence from the employer confirming this has occurred; and
- (c) the respondent is to satisfy the Teaching Council's Manager of Professional Responsibility that he has an appropriate care plan in place before commencing employment; and
- (d) annotation of the register for a period of two years.

[26] The Tribunal agrees that the appropriate penalty in this case will balance rehabilitation and meeting the protective purpose of discipline. The Impairment Report provides the best available evidence on which we can impose reasonable conditions regarding the respondent's mental health and the potential impact on his employment as a teacher.

[27] The Tribunal is also mindful that the respondent is based overseas and if he returns to New Zealand there is a need to ensure that as far as possible conditions are such that the risk of a similar unfortunate course of events is managed. This includes ensuring that an employer is cognisant of the need to provide support and orientation into the school and the New Zealand education setting.

[28] Taking the submissions and evidence into account the Tribunal considers that the following penalty is appropriate:

- (a) Conditions on a current or future practising certificate that the respondent:
 - (i) Provides the Teaching Council Manager-Professional Responsibility with evidence from a suitably qualified health professional that he has a plan for management of his mental health with New Zealand based health professionals before commencing a teaching position; and
 - (ii) Discloses the Tribunal's decision to a prospective or future employer (in a teaching position) for a period of two years;
 - (iii) Engages in mentoring with a senior manager within the school at which he is employed to provide formal support over the first 12 months of employment (and any lesser period if the respondent is employed on a part time or relief teaching basis).

- (b) Annotation of the register for a period of two years.

Costs

[29] In the usual course the CAC seeks a contribution towards the costs incurred in these proceedings. The Tribunal's Practice Note 1: Costs sets out guiding principles for exercising the discretion to order costs. The Tribunal received a schedule of costs and requested further information from the CAC as to the quantum of these, mindful that the Practice Notes refers to orders on the basis of "reasonable costs". We received a memorandum from counsel dated 12 February 2025 advising:

- (a) the Committee's actual costs are \$17,864.94 including investigation costs (\$1,618.94);
- (b) these costs are comprised of preparation for and attending to pre-hearing administrative matters, preparation of the Agreed Summary of Facts which took time and particular care given the respondent's circumstances; applying to amend the charge, preparing for hearing including a bundle and detailed written submissions addressing the separate particulars, and attendance at the hearing.
- (c) the costs have been considered in light of the Practice Note and the CAC considers that they are reasonable.
- (d) costs are not claimed in relation to the time spent on amending the notice of charge.

[30] We did not receive any information from the respondent as to costs. An order will be made that the respondent make a 40% contribution as sought.

Non-Publication Orders

[31] The respondent did not make an application for non-publication orders. However, an application was filed on behalf of the school, its staff and students and in support of extending non-publication to the respondent. The CAC also applied for an order to permanently suppress the name and identifying particulars of any students, teachers and the parent in relation to whom the respondent made inappropriate remarks (although they are not named in the material before the Tribunal. The applications

rely on the grounds that there is no public interest in this information being made known, and that such orders would not impact on the ability to meaningfully describe the circumstances of the case.

- [32] The starting point is that proceedings before the Tribunal are public, based on the principle of open justice. Section 501 of the Act recognises that the Tribunal may in its discretion consider that it is “proper” to order non-publication of the name of a person, or of evidence including documents that have been provided to the Tribunal in relation to the disciplinary charge. In making an order the Tribunal is required to balance the public interest against the interests of any person.
- [33] The principles of open justice and transparency of disciplinary proceedings means a usual expectation that the names of teachers who face a disciplinary charge will be published. The Tribunal often refers to upset or embarrassment or concern for reputational harm in the face of publication of an adverse disciplinary finding as an ordinary consequence for the teacher and foreseeably, for those who are close to them. In most cases this will not be sufficient to provide a basis to make an order.
- [34] The school’s application conveys that there is a need to ensure that the respondent’s privacy in relation to sensitive mental health issues is protected. [REDACTED] [the principal’s] affidavit refers to the stigma attached to mental health issues, describes the respondent as “*vulnerable*” and states that the principal and the school:
- “...do not want the unnecessary publication of identifying information to create more harm than it needs to for the Respondent, our other teachers, or our students and their parents.”
- [35] We are also mindful that as an unrepresented party unfamiliar with the New Zealand system and currently residing overseas the respondent may not have fully appreciated the possibility of publication of his name, his health issues and the events that occurred. The Tribunal will frequently suppress the publication of sensitive information that is presented in evidence. In this case we consider that the decision would not fairly describe the circumstances of the case if we were to publish the respondent’s name but suppress sensitive health information.
- [36] The Tribunal has also previously granted non-publication orders where concern that publicity will threaten a teacher’s rehabilitation was found to be a legitimate ground.

This has been so in cases involving misuse of alcohol.¹³ We consider it is proper to make an order in favour of the respondent balancing his interests in privacy and rehabilitation against the public interest in knowing his name. It is also proper to make the remaining orders sought by the school.

Orders

[37] Accordingly, the Tribunal makes the following orders pursuant to s500 of the Act:

- (a) Censure.
- (b) Conditions pursuant to section 500(1)(c) and (j) imposed on the respondent's current and any subsequent practising certificate as follows:
 - (i) that the respondent provides the Teaching Council Manager-Professional Responsibility with evidence from a suitably qualified health professional that he has a plan for management of his mental health with a New Zealand health professional(s) before commencing a teaching position.
 - (ii) that the respondent discloses this decision to a future employer in the teaching profession for a period of two years.
 - (iii) that the respondent has mentoring from a senior manager within the school at which he is employed to provide formal support over the first 12 months of employment (and any lesser period if the respondent is employed on a part time or relief teaching basis)
- (c) Annotation of the register for a period of two years, pursuant to section 500(1)(e).
- (d) Costs pursuant to s500(1)(h) of the Act - \$6522.50.

[38] Pursuant to section 501 the following orders for non-publication are made:

- (a) The name and identifying particulars of [REDACTED], the respondent, including the location (country) where he was teaching before commencing employment at the school;

¹³ For example *Complaints Assessment Committee v Teacher J* [2018] NZTDT 60; *Complaints Assessment Committee v Teacher* [2023] NZTDT 35; *Complaints Assessment Committee v Teacher B* NZTDT 2022/57; *Complaints Assessment Committee v Teacher P* 2018/63.

- (b) The name and identifying particulars of [REDACTED] (the school) including the name of teachers, students and parents in relation to these proceedings.

A handwritten signature in blue ink, reading "C Garvey". The signature is written in a cursive style with a large, looped "C" and a stylized "Garvey".

Catherine Garvey
Deputy Chair of the New Zealand Teacher's
Disciplinary Tribunal