

PERMANENT NON-PUBLICATION
ORDERS

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2024/33

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

(Authorisation)

Kaiurupare | Respondent

Nohanga | Hearing

2 and 3 December 2025 (by AVL)

Hei Māngai | Appearance

J Ah Koy for the CAC.
M C Harris for Respondent

Tribunal Members: James Gurnick
Celeste Harrington
Kura Tuhura

DECISION

Introduction

[1] The Complaints Assessment Committee (**CAC**) has brought charges against Ms , a registered teacher, alleging serious misconduct and/or misconduct arising from two separate incidents at (the Centre) in early 2023.

[2] The charges relate to:

- (a) an alleged incident on 23 February 2023 involving Child A, where it alleged Ms █████ pushed and/or pulled the child into the Centre; and
- (b) an alleged incident on 19 April 2023 involving Child B, where it alleged Ms █████ inappropriately handled the child by picking him up and carrying him by the back of his shirt and/or speaking gruffly to him.

[3] Ms █████ denies both charges. The hearing took place by AVL on 2 and 3 December 2025.

[4] Having heard and carefully considered all the evidence, the Tribunal has determined that the charges must be dismissed for the reasons set out below.

The law

[5] The CAC bears the burden of proving the charges on the balance of probabilities. This is the civil standard of proof, requiring the Tribunal to be satisfied that it is more likely than not that the alleged conduct occurred.

[6] In assessing whether the standard of proof has been met, the Tribunal must consider the quality and reliability of the evidence presented. Where witness evidence is inconsistent or unreliable, the Tribunal cannot be satisfied that the requisite standard has been met.

[7] Section 10 of the Education and Training Act 2020 defines “serious misconduct” as conduct by a teacher that:

- (a) adversely affects, or is likely to adversely affect, the well-being or learning of one or more students; or
- (b) reflects adversely on the teacher’s fitness to be a teacher; or
- (c) may bring the teaching profession into disrepute; and
- (d) that is of a character or severity that meets the Teaching Council’s criteria for reporting serious misconduct.

[8] Rule 9(1)(a) of the Teaching Council’s Rules 2016 provides that using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so may constitute serious misconduct. Rule 9(1)(k) provides that acting in a way that

brings, or is likely to bring, the teaching profession into disrepute may also constitute serious misconduct.

[9] The Tribunal must be satisfied not only that the conduct occurred, but also that it meets the threshold for serious misconduct or misconduct. Given the serious professional consequences that may follow a finding of serious misconduct, the evidence must be clear and cogent.

The evidence

Evidence for the CAC

[10] The CAC called two principal witnesses regarding the alleged incidents:

- (a) Ms ██████████, in relation to the incident involving Child B; and
- (b) Ms ██████████, in relation to the incident involving Child A.

[11] Ms ██████████ gave evidence that on 19 April 2023, she witnessed Ms ██████████ pick up Child B “like a suitcase” by the back of his shirt with one hand and carrying him out of the bathroom area. She stated that Child B had been pulling nappies from the cubbies repeatedly that day. However, under cross-examination, Ms ██████████ evidence revealed significant inconsistencies:

- (a) she initially stated she saw Ms ██████████ carry the child “approximately three steps” but later acknowledged she did not see how far into the classroom Ms ██████████ carried him;
- (b) she admitted she did not intervene or say anything to Ms ██████████ at the time;
- (c) she did not report the incident immediately but waited until 13 May 2023, nearly a month later, to raise it with Ms ██████████ and
- (d) her explanation for the delay was that she “didn’t want to cause any friction” as Ms ██████████ was the Centre manager.

[12] Ms ██████████ gave evidence regarding the 23 February 2023 incident involving Child A. Her evidence was that she saw Ms ██████████ “dragging” Child A towards the Centre door and then “pushing” him inside. However, her evidence also contained troubling inconsistencies:

- (a) she claims to have “jumped the fence” to intervene but then admitted she had

not actually intervened at all because she “didn’t want [Ms ██████] to be grumpy or upset” with her;

- (b) her description of the physical layout and distances involved shifted during cross-examination;
- (c) she claimed Child A’s mother was “within five metres” and witnessed the incident, yet the mother’s own statement was not provided to the Tribunal;
- (d) she admitted she “lost all respect and trust” in Ms ██████ “instantly” after the incident, raising questions about the objectivity of her subsequent observations and recollections.

[13] Ms ██████, the Centre owner, gave evidence about her investigation into the matters. The Tribunal found significant deficiencies in the investigation process:

- (a) formal statements were not taken until many weeks after the alleged incidents;
- (b) Ms ██████ notes from her initial interviews were brief and lacked detail;
- (c) no contemporaneous incident reports were filed at the time of either alleged incident;
- (d) the investigation appeared to have been prompted by interpersonal conflicts within the Centre rather than immediate concerns about child safety.

Evidence for Ms ██████

[14] Ms ██████ gave evidence denying both allegations. Her evidence was that:

- (a) regarding Child A, she assisted him into the Centre when he was reluctant to enter, but did not push or pull him inappropriately;
- (b) regarding Child B, she acknowledged picking him up to remove him from the bathroom area where he was creating a hazard by pulling nappies onto the floor, but denied carrying him by his shirt or handling him roughly;
- (c) she had been the Centre manager since April 2022 and had over 20 years of experience in early childhood education with no prior disciplinary issues;

- (d) there was a culture of gossip and interpersonal conflict at the Centre which she had been trying to address as manager.

[15] Ms ██████ ██████, a colleague, gave evidence supporting Ms ██████ professionalism and appropriate interactions with children. Her evidence was that Ms ██████ was patient, caring and always acted in the children's best interests.

Discussion

[16] The Tribunal is faced with two brief moments in time from early 2023 – what counsel aptly described as an attempt to “slice and dice” isolated incidents without proper context. These alleged incidents must be evaluated against the backdrop of Ms ██████ exemplary career spanning over two decades without any prior concerns about her treatment of children.

[17] The Tribunal has significant concerns about the reliability of the evidence presented by the CAC. Both principal witnesses, Ms ██████ and Ms ██████, demonstrated troubling inconsistencies in their accounts. These were not minor discrepancies about peripheral details, but fundamental inconsistencies about what they claimed to have witnessed and their own actions in response.

[18] Ms ██████ month-long delay in reporting what she now characterises as serious misconduct is deeply problematic. If she genuinely witnessed a child being carried “like a suitcase” in a manner that endangered the child's safety, the Tribunal would expect immediate action, not a casual conversation over coffee nearly a month later. Her explanation that she wished to avoid “friction” with her manager is not credible given the serious nature of what she alleges she witnessed.

[19] Similarly, Ms ██████ evidence about “jumping the fence” to intervene, only to admit she did not intervene at all, undermines her credibility. The Tribunal notes that if the incident was as serious as Ms ██████ now suggests, her failure to act or report it immediately is inexplicable. Her admission that she “instantly” lost all respect for Ms ██████ suggests a level of animosity that may have coloured her subsequent recollection and reporting of events.

[20] The investigation conducted by Ms ██████ was manifestly inadequate. The failure to take formal statements promptly, the lack of contemporaneous documentation, and the apparent influence of workplace dynamics on the investigation process all contribute to

the unreliability of the evidence before the Tribunal. The Tribunal notes with concern that witness statements were taken long after the incident occurred, allowing for the possibility of memory fade, contamination through discussion among staff, and the influence of an acknowledged “culture of gossip” within the Centre.

[21] The Tribunal must also consider what was not present. Child A’s mother, who was allegedly present and witnessed the incident, did not provide evidence. No other parents raised concerns about Ms ██████ interactions with their children. No contemporaneous complaints or incident reports exist. These absences speak volumes.

[22] Against this problematic evidence, the Tribunal has Ms ██████ consistent denials and her exemplary professional record. She has been a registered teacher for over 20 years without any prior disciplinary issues. She was entrusted with the management of the Centre. Multiple colleagues have attested to her professionalism and appropriate interactions with children.

[23] The Tribunal is mindful that allegations of physical misconduct toward children are extremely serious and must be thoroughly investigated. However, the seriousness of the allegations does not diminish the CAC’s burden to prove them with reliable evidence. The standard of proof remains the balance of probabilities, but the evidence must be sufficiently cogent and reliable to meet that standard.

[24] In this case, the evidence falls well short. The Tribunal cannot be satisfied on the balance of probabilities that Ms ██████ engaged in the conduct alleged. Inconsistencies in the witnesses’ evidence, the inadequate investigation, the significant delays in reporting, and the apparent influence of workplace conflicts on the complaint all combine to create substantial doubt about what, if anything, actually occurred as alleged.

Conclusion

[25] For the reasons set out above, the Tribunal finds that the CAC has not discharged its burden of proving the charges against Ms ██████ on the balance of probabilities.

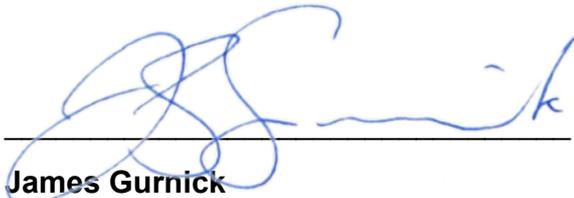
[26] The Tribunal emphasises that teachers must always handle children with appropriate care and respect. However, teachers must also be protected from unsubstantiated allegations based on unreliable evidence. The teaching profession depends on maintaining appropriate standards while ensuring fair processes for all involved.

[27] Both charges against Ms ██████ are hereby dismissed.

[28] The Tribunal makes no order as to costs.

Name suppression

[29] The charges having been dismissed, in our view Ms [REDACTED] is entitled to permanent name suppression. The Tribunal grants permanent name suppression to the respondent and those witnesses who gave evidence at trial, either in person or by way of brief of evidence. The name of the Centre and the children involved, including any identifying features, are also suppressed.



James Gurnick
Deputy Chair of the New Zealand Teachers
Disciplinary Tribunal