

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2024-51

I TE TAKE O the Education and Training Act 2020
In the matter of

I TE TAKE O a charge referred by the Complaints
In the matter of Assessment Committee to the New Zealand
Teachers Disciplinary

KO **Complaints Assessment Committee**
Between *Kaiwhiu | Prosecutor*

ME **Shannan McPeak**
And *Kaiurupare | Respondent*

TRIBUNAL DECISION

18 July 2025

NOHOANGA: Held on 7 July 2025 on the papers via Teams
Hearing

TE TARAIPUNARA: Ian Murray (Tiamana Tuarua)
The Tribunal Simon Walker raua ko Lyn Evans (Ngā mema o te
Taraipunara)

NGĀ ROIA ME NGĀ

KAIAWHINA: E Mok and N Pearce-Bernie for Complaints Assessment Committee
Representation J Brown for the Respondent

Hei timatanga kōrero – Introduction

1. The Complaints Assessment Committee (CAC) has referred a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers. In an Amended Notice of Charge dated 24 March 2023, the CAC alleged that the respondent:
 - a. Made inappropriate comments to students, namely:
 - i. Saying “you only scream like that when you’re being raped” to Student A; and/or
 - ii. Saying “I wish I could do that, but I’m not allowed” to Student C after she had hit Student D’s bottom.
2. The CAC contends that this conduct amounts to serious misconduct pursuant to section 10 of the Education and Training Act 2020 (the Act) and rules 9(1)(b), (e) and (k) of the Teaching Council Rules 2016 (the Rules); or conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under section 500 of the Act.

Whakarāpopoto o te whakataunga – Summary of decision

3. We conclude that the charge is established and that the conduct amounts to serious misconduct.
4. By way of penalty we make the following orders:
 - a. Censure;¹
 - b. Annotation of the register for a period of 12 months; ²
 - c. That the following condition is imposed on any practising certificate issued to the respondent for a period of 1 year following the Tribunal's decision); ³
 - iii. To be mentored for a period of 12 months from the date of this decision.
5. We ordered the respondent to pay 40% of the CAC and Tribunal’s costs and we also

¹ Pursuant to s 500(1)(b) of the Act

² Pursuant to s 500(1)(e) of the Act

³ Pursuant to s 500(1)(c) of the Act

ordered non-publication of the students' names.

Kōrero Taunaki – Evidence

6. Before the hearing the parties conferred and submitted an Agreed Summary of Facts (ASF), signed by counsel for the respondent and counsel for the CAC. The ASF is set out in full:

Introduction

1. At all material times, Shannan McPeak was a registered teacher. Mr McPeak has a current practising certificate, which will expire on 11 March 2027.
2. At all relevant times, Mr McPeak was a teacher in the product design department at Rototuna Junior High School (**School**) in Hamilton. Mr McPeak began a permanent teaching position at the School on 28 January 2021. He continues in this role.
3. While a teacher at the School, Mr McPeak had two inappropriate interactions with Year 9 students, all of whom were 13 years old at the time. The first involved **Student A**, and the second involved **Student C** and **Student D**.

Incident with Student A

4. On or about 4 March 2022, Student A was using a hammer in Mr McPeak's class when another student came up behind her and said "boo" in her ear. Student A got a fright and hit her own finger with a hammer, causing Student A to scream out loud in the class.
5. Mr McPeak heard Student A scream and told her off. Student A tried to explain what had happened, but Mr McPeak did not listen to her and stated, "you only scream like that when you are getting raped".

Impact on Student A

6. Student A was upset by the interaction on 4 March 2022. Mr McPeak's comment caused her to cry and want to leave the class. As of October 2023, Student A continued to not go to classes if she knew that Mr McPeak would be there.

Steps taken by the School

7. Student A told her mother about what Mr McPeak had said to her. On or about 8 March 2022, Student A's mother emailed the principal, Mr Hill, raising concerns about the rape comment. The principal phoned Student A's mother and spoke to her. The principal also emailed Mr McPeak and suggested that they meet to talk.
8. On or about 9 March 2022, Mr Hill advised Student A's mother that he had spoken with Mr McPeak about the inappropriateness of the comment and that Mr McPeak had apologised to the entire class for reprimanding Student A inappropriately almost immediately afterwards, and that he also spoke with Student A and the group that she was with. He also advised her that Mr McPeak understood that the comment was inappropriate, that he is upset with himself and that he had offered to call her if she would like that.

Incident with Student C and Student D

9. On or about 8 June 2022, Student C hit Student D on the bottom in a joking way. Mr McPeak, who was present and who had observed the interaction, stated "I wish I could do that, but I'm not allowed".
10. Student D was upset by Mr McPeak's comment and found it to be creepy.

Steps taken by the School

11. Student D reported the incident to the deputy principal, Ms Somerville.

12. On or about 15 June 2022, Mr Hill sent Mr McPeak a letter inviting him to a meeting about the incident that occurred with Student C and Student D. Mr Hill sent Mr McPeak a letter of expectation concerning the incident. Mr McPeak agreed to participate in an informal support programme over the next few weeks and agreed to attend a restorative meeting with the students involved. However, this meeting ultimately did not take place due to other issues arising.

Mandatory report and Committee process

13. On 1 March 2023, Mr Hill submitted a mandatory report to the Teaching Council in relation to Mr McPeak's conduct with respect to Student A. The Council's Triage Committee referred the matter to the Complaint's Assessment Committee (**Committee**) for investigation.

14. On 20 July 2023, the Triage Committee referred Mr McPeak's conduct in respect of the Student C and Student D incident by way of own motion to the Committee for investigation, based on information discovered during the initial investigation.

15. On 17 August 2023, Mr McPeak's representative provided a further response on Mr McPeak's behalf. The response indicated that Mr McPeak accepted having made inappropriate comments towards Student A, and Students C and D, and that he regretted that conduct.

16. On 10 April 2024, a draft investigation report was provided to Mr McPeak via email for response.

17. On 18 April 2024, Mr McPeak's representative provided a response to the draft investigation report, reiterating his previous responses. The response also added, in respect of the Student A incident, that Mr McPeak's conduct had occurred during a workshop session where dangerous objects such as power tools and sharp instruments were present, and that screaming was not appropriate in a workshop environment.
7. The first step is to decide if the charge has been established. Before we can do that we must be satisfied on the balance of probabilities that the CAC has proved the allegations in the particulars of the charge. In this case, the admissions in the summary of facts provide an adequate basis to establish the charge. Accordingly, we find that the particulars of the charge are established.

Hapa Taumaha - Serious Misconduct

8. It is for the Tribunal to be satisfied that the established conduct amounts to serious misconduct or conduct otherwise entitling the Tribunal to exercise its powers.
9. 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 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.
10. In this case the relevant reporting rules⁴ alleged to be engaged are:
 - (b) emotional abuse that causes harm or is likely to cause harm to a child or

⁴ Contained in Rule 9 of the Teaching Council Rules 2016.

young person;

(e) breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher's position as a teacher;

(k) an act or omission that brings, or is likely to bring, the teaching profession into disrepute.

Ngā Kōrero a te Kōmiti - CAC submissions

11. The CAC set out the basis on which the alleged conduct met the threshold of serious misconduct. The CAC argue that all three of the statutory criteria in s 10 and both of the reporting rules, Rules 9(1)(e) and (k) are made out. No submissions were made about reporting rule 9(1)(b).

Ngā Kōrero a te Kaiurupare - Respondent's submissions

12. The respondent responsibly accepts the conduct amounts to serious misconduct.

Kōrerorero – Discussion

13. Notwithstanding the respondent's concession, ultimately, we must be satisfied that the respondent's conduct meets at least one of the criteria for serious misconduct in section 10 of the Act, as well as being of a character or severity that meets the criteria for reporting serious misconduct contained in rule 9.

14. Turning to the two-stage test in s 10 and rule 9.⁵ The first criteria is to consider if the behaviour has had an adverse impact on the students' wellbeing or learning. We consider that both comments were unacceptable but in particular the first comment making light of rape in the way it did was highly insensitive and inappropriate. The second comment could have been interpreted as indicating a desire to carry out something with a sexual overtone on Student D and that seems to be how Student D interpreted the comment. Whether that was the intended effect, that is how it was perceived and that perception has impacted on the student.

15. We had clear evidence of the understandable impact on the students. Student A began to cry and left the classroom and after that did not want to go to classes taught

⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141 at [64].

by the respondent. Student D found the comment “creepy”. We find that it is clearly established that the misconduct negatively impacted on the well-being of the students.

16. While the conduct in question involved two separate but brief comments, nonetheless, the respondent acted in a highly inappropriate way. It is the antithesis of how teachers are trained to interact with students. Teachers need to exercise care and judgment in their interactions with students and these comments failed to do this in a significant way. In our view, this behaviour clearly adversely reflects on the respondent’s fitness to be a teacher.
17. The test for deciding whether a teacher’s actions are likely to bring the teaching profession into disrepute is informed by the conclusions of the Court in *Collie v Nursing Council of New Zealand*.⁶ It is an objective test and requires consideration of 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 respondent’s actions.
18. To decide whether the behaviour in question may bring the teaching profession into disrepute, we considered the respondent’s conduct and compared that with how we consider reasonable members of the public would view the teaching profession because of this conduct. We consider that both comments would have shocked people especially parents of children of this age. They were obviously highly inappropriate and sexualised. One trivialised rape and the other showed an interest in a student that could be seen as sexualised. We understand why Student D found it creepy.
19. So notwithstanding the brief nature of the comments, we have concluded that 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 respondent’s actions. As a result this criteria is also established.
20. Turning to our analysis of Rule 9, while the notice of charge recorded Rule 9(1)(b)⁷ as one of the Rules breached, no submissions were made about that rule and accordingly we did not consider it. Turning to Rule 9(1)(e) given the sexual overtones

⁶ *Collie v Nursing Council of New Zealand* [2001] NZAR 74.

⁷ This Rule alleges emotional abuse that causes harm or is likely to cause harm to a child or young person

of the comments we consider that the comments clearly breached professional boundaries with those students. The topics involved were not appropriate topics to canvass with Year 9 students and more especially not in the way that he did. We have already found the conduct had the tendency to bring the teaching profession into disrepute. As a result, the criteria for reporting serious misconduct is also established.

21. That means the test for serious misconduct has been made out.

Whiu - Penalty

22. In *CAC v McMillan*,⁸ we summarised the role of disciplinary proceedings against teachers as:

... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

23. Our powers on finding serious misconduct are contained in section 500 of the Act:
- a. any of the things that the Complaints Assessment Committee could have done under section 497(2):
 - b. censure the teacher:
 - c. impose conditions on the teacher's practising certificate or authority for a specified period:
 - d. suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:
 - e. annotate the register or the list of authorised persons in a specified manner:
 - f. impose a fine on the teacher not exceeding \$3,000:
 - g. order that the teacher's registration or authority or practising certificate be cancelled:
 - h. require any party to the hearing to pay costs to any other party:
 - i. require any party to pay a sum to the Teaching Council in respect of the costs of conducting the hearing:
 - j. direct the Teaching Council to impose conditions on any subsequent

⁸ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, paragraph 23.

practising certificate issued to the teacher.

Ngā Kōrero a te Kōmiti – CAC Submissions

24. The CAC proposed the following penalty:

- (i) Censure;
- (ii) Annotation of the Register (for 12 months);
- (iii) Conditions (to apply for 12 months from the date of the Tribunal's decision to any current or future practising certificate):
 - (A) To provide a copy of the Tribunal's decision to current or future employer.
 - (B) To undertake a professional development course on maintaining professional boundaries with students within six months of the Tribunal's decision.

Ngā kōrero a te Kaiurupare – Respondent's submissions.

25. The respondent sought only a censure because he submitted the passage of time and the work done by the respondent had removed the need for the other penalties proposed by the CAC.

Kōrerorero - Discussion

26. We were certainly troubled by the conduct in this case. It was not just the inappropriate sexual undertones of the comments but the belittling nature of the comment about rape. While we fully understand that flippant and thoughtless comments can be made on the spur of the moment, we were disturbed that Mr McPeak's mind went to the topic of rape when he heard a young girl cry out. We were also concerned that he expressed a desire to hit a student in what was clearly construed by her as creepy. The fact that the behaviour was repeated and there was a sexual element to both comments showed it was not simply a one off mistake.

27. As against that we were impressed with the respondent's reflective statement and the insight he showed. We were provided with a reference from his current school. He clearly has the support of this school and the principal, and we were impressed with the assistance being provided to him. We are confident that a repeat of this behaviour is highly unlikely. Mr McPeak was issued with a final warning by

the school so can be under no illusions of the likely consequences if he did repeat the behaviour.

28. We are also impressed with the efforts at rehabilitation already undertaken by the Respondent. We note that the school principal advised us “Shannan successfully completed a robust mentoring programme where he met weekly with his Curriculum and Pastoral Leaders, and fortnightly with the previous Principal. This was in the first half of 2023.”
29. We want to impose a penalty that acknowledges the relative seriousness of what occurred but one that will also assist the respondent to continue to rehabilitate and improve his teaching practice. While we see force in the conditions suggested by the CAC, we consider the passage of time and the way the school is managing the situation renders the proposed conditions unnecessary. However, we do consider that the respondent would benefit from a continuation of the mentoring that appears to have worked well for him.
30. As a result we make the following orders:
 - a. Censure;⁹
 - b. Annotation of the register for a period of 12 months;¹⁰
 - c. That the following condition is imposed on his practising certificate for a period of 12 months following the Tribunal's decision:¹¹
 - iv. To practice under the guidance of a mentor.

Utu Whakaea - Costs

31. The CAC sought a contribution of 40% of its costs. The respondent has not objected to this level of costs.
32. The Tribunal has previously indicated that costs of 40% will ordinarily be appropriate in cases determined on the papers and we see no reason to depart from that

⁹ Pursuant to s 500(1)(b) of the Act

¹⁰ Pursuant to s 500(1)(e) of the Act

¹¹ Pursuant to s 500(1)(c) of the Act

approach in this case.

33. Therefore, the Tribunal orders the respondent to pay 40% of the CAC's actual and reasonable costs¹² and the Tribunal's costs.¹³
34. The CAC costs¹⁴ were \$8,181.00 and so 40% of those costs amounts to \$3,272.40.
35. The Tribunals own costs are set out below.

Chair (estimated) Sitting Fee (1/4 day) Pre and post hearing	\$675
Tribunal Members x 2 Sitting Fee (1/4 day) x 2 Pre and post-hearing	\$620
Disciplinary Tribunal Coordinator costs - 2 hrs @ \$80/hr	\$160
TOTAL ESTIMATED EXPENDITURE	\$1,455

36. The Tribunal costs were \$1,455.00 and so 40% of those costs amounts to \$582.00.
37. Accordingly, we order that the respondent pay \$3,272.40 as a contribution to the CAC's costs and \$582.00 as a contribution to the Tribunal's costs.

He Rāhui tuku panui – non-publication

38. At a pre-hearing conference on 28 January 2025, the Deputy Chair made interim non-

¹² Pursuant to s 500(1)(h) of the Act

¹³ Pursuant to s 500(1)(i) of the Act

¹⁴ Exclusive of GST in accordance with *New Zealand Venue and Event Management Limited v Worldwide NZ LLC* [2016] NZCA 282.

publication orders preventing publication of “the name and identifying particulars of the respondent including the name of the school involved and the name of any learners involved in the case.” However, at the hearing permanent non-publication orders were only sought for the names of the learners involved in the case.

39. In those circumstances we make a permanent order prohibiting publication of the name of students involved in the incident, students A, C and D.

40. For the avoidance of doubt, the interim non-publication order for the respondents identifying details has accordingly lapsed.



Ian Murray

Te Upoko Tuarua o Te Rōpū Whakaraupapa o Aotearoa –
Deputy Chairperson of the New Zealand Disciplinary Tribunal