

FINAL NON-PUBLICATION ORDERS

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2025-04

RARO TE MANA O TE the Education and Training Act 2020
UNDER THE **(the Act)**

MŌ TE TAKE of a charge referred to the Tribunal
IN THE MATTER OF

I WAENGA I A **COMPLAINTS ASSESSMENT**
BETWEEN **COMMITTEE (CAC)**

Kaiwhiu | Prosecutor

ME 
AND Kaiurupare | Respondent

Nohoanga Hearing	11 February 2026
Tribunal:	T Mackenzie, S Walker, G Ashworth
Hei Māngai Appearance	R Georgetti, Teaching Council for the CAC
	B Houghton, T Conder for Respondent

**DECISION OF THE TRIBUNAL ON LIABILITY, PENALTY,
PUBLICATION AND COSTS**

26 May 2026

Introduction

[1] Mr [REDACTED], a registered teacher, is charged by the Complaints Assessment Committee with serious misconduct. This relates to his conduct towards a young female high school student from [REDACTED] who was briefly staying at his home as a “homestay” student, after arriving to study at a high school in New Zealand.

[2] Mr [REDACTED] accepts that his conduct was misconduct, but disputes whether it was serious misconduct. Facts are agreed. This is our decision on all issues.

Charge and facts

[3] The particulars of the charge are:

a. On 10 February 2024, made inappropriate physical contact with a homestay learner, Learner A, including by;

i. Stroking the leg and calf area of Learner A;

and/or

ii. Touching Learner A's face and hair;

and/or

iii. Kissing Learner A on the forehead.

[4] The parties have reached agreed facts. These are appended and should be referred to when reading this decision.

Serious misconduct

[5] We will first set out the general legal principles which apply to the serious misconduct test.

[6] The test for serious misconduct is set out at s 10 of the Education and Training Act 2020. Section 10 defines “serious misconduct” as follows:

serious misconduct means conduct by a teacher—

(a) that—

(i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or

(ii) reflects adversely on the teacher’s fitness to be a teacher; or

(iii) may bring the teaching profession into disrepute; and

(b) that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct

[7] Regarding the first aspect of this test (adverse affect(s)). In *CAC v Marsom* this Tribunal said that the risk or possibility is one that must not be fanciful and cannot be discounted.¹ The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

[8] The second limb (fitness) has been described by the Tribunal as follows:²

We consider that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community expectation, paragraph (b) concerns whether the teacher's conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community. The views of the teachers on the panel inform the view taken by the Tribunal.

[9] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.³ The Court considered that the question that must be addressed is an objective one: 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 conduct of the practitioner. We take the same approach.

[10] Section 10(b) of the serious misconduct test refers to reporting criteria. The Court of Appeal (discussing the same wording from the former Education Act 1989) has affirmed that this reporting criteria limb creates a conjunctive test for serious misconduct.⁴ That is, one of the three limbs of (a), and one of the criteria from (b), must both be met for serious misconduct to be made out. In this case Rule 9(1)(k) is relied on (disrepute).

[11] We have no hesitation in finding that all three elements of the first limb of the test are made out. Although the physical acts themselves are at the lower end of the scale, the fact that they occurred in this context is significant. The student was very vulnerable. The conduct did have adverse effects, and even without direct affect, was certainly likely to have them.

¹ *CAC v Marsom* NZTDT 2018/25, referring to *R v W* [1998] 1 NZLR 35.

² *CAC v Crump* NZTDT 2019-12, 9 April 2020 (referring to the test in the 1989 Act, which used different paragraph references).

³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

⁴ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

[12] The conduct also reflects adversely on Mr [REDACTED] fitness to teach, in our view. How adversely is more a matter for penalty. The fact is that it does, particularly when the setting and context is appreciated.

[13] Finally we also consider that the disrepute test is met, for the same reasons.

[14] Turning to the second aspect of the serious misconduct test, we consider that the conduct is at a level of severity and character that it would meet the reporting criteria, in this instance for disrepute under rule 9(1)(k).

[15] Our findings are due to a combination of the nature of the conduct, Mr [REDACTED] age and experience, the age of the student, and their vulnerability in staying at Mr [REDACTED] home after having just arrived in New Zealand. In those circumstances for a registered teacher to commit this conduct would in our view easily meet all tests.

[16] In making those findings we do not impute any sexual motivation toward Mr [REDACTED]. But we do not need to, to make our findings. The simple point is that an elder male teacher has acted in this way toward a vulnerable female foreign child staying at his home. Whilst counsel for Mr [REDACTED] makes the point (several times) that this was “not teaching”, that is of little relevance. This homestay situation is not a teaching situation. It is examined on its own merits. But the conduct had some connection with teaching in a wider sense, and consequently that has some impact on our view of Mr [REDACTED] conduct. That is because he was hosting international school students as a homestay provider, albeit for only a few days in this instance. This was not for instance a random guest at a bed and breakfast run by Mr [REDACTED].

[17] We also consider that the finding of serious misconduct is consistent generally with a similar view taken by the Tribunal in a range of other decisions, albeit each has different features.⁵

⁵ *CAC v Buchan* NZTDT 2017/23, 8 February 2018; *CAC v Teacher V* NZTDT 2020/22, 23 November 2020; *CAC v Teacher* NZTDT 2023/09, 8 November 2023; *CAC v Driver-Burgess* NZTDT 2019/69, 8 September 2020; *CAC v Teacher A* NZTDT 2020/5, 5 July 2020.

Appropriate orders

[18] We will first set out the applicable principles. In *CAC v McMillan* the Tribunal summarised the role of disciplinary proceedings in this profession as:⁶

... 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.

[19] The Tribunal in *McMillan* noted that there are three primary purposes when imposing penalty. These are:

- I. to protect the public through the provision of a safe learning environment for students;
- II. to maintain professional standards; and
- III. to maintain the public's confidence in the profession.

[20] The Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances.⁷

[21] In *CAC v Fuli-Makaua* this Tribunal noted that cancellation may be required in two overlapping situations:⁸

- a) Where the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession; and
- b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.

[22] The Act provides for a range of different penalty options, giving this Tribunal the ability to tailor an outcome to meet the requirements that a proven case presents to us. Penalties can range from taking no steps, to cancellation of a teacher's registration.

⁶ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, (at [23]).

⁷ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

⁸ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 (at [27]).

[23] Although the penalty range can appear somewhat linear, our real task is to impose the appropriate penalty considering the purposes of this regime, all of the facts of the conduct, and all of the features of the respondent. The nuances involved mean that attempts at like for like comparisons of end results in other cases may not yield more than general patterns.

[24] Mr [REDACTED] presents as remorseful and as having taken full responsibility for his behaviour. He has attended suitable counselling and has chosen to no longer practice as a teacher. He has also determined to no longer have homestay students.

[25] The parties are in agreement that a censure is appropriate.⁹ We also agree with that sanction, to mark the finding made and to signal that teachers must uphold standards.

[26] The CAC also suggests annotation of the register and a condition requiring reporting to future employers. We do not see annotation of the register as required in this case given Mr [REDACTED] age and his intentions not to teach.

[27] We do however consider a reporting condition is required.¹⁰ This may be of no moment to Mr [REDACTED] as he doesn't intend to teach again. But should that change, we order that a condition be placed on any future practising certificate issued to Mr [REDACTED] requiring him to inform and provide to any current employer, or prospective employer, in the teaching profession a copy of the Tribunal's decision for a period of two years after the Tribunal's decision.

Publication

[28] Several non-publication issues arise. We will first set out the applicable principles.

[29] The default presumption is that Tribunal hearings are to be conducted in public. This of course is the case for most courts and tribunals in New Zealand.

[30] The Tribunal can only make one or more of the orders for non-publication specified in section 501(6) if we are of the opinion that it is proper to do so, having regard to the interest of any person (including, without limitation, the privacy of the complainant, if any) and to the public interest.

⁹ Section 500(1)(b) of the Act.

¹⁰ Section 500(1)(j).

[31] The purposes underlying the principle of open justice are well settled. As the Tribunal said in *CAC v McMillan*, the presumption of open reporting “exists regardless of any need to protect the public”.

[32] Nonetheless, that is an important purpose behind open publication in disciplinary proceedings in respect to practitioners whose profession brings them into close contact with the public. And all the more so when the particular public we are considering are children.

[33] In *CAC v Finch*,¹¹ the Tribunal described a two-step approach to name suppression that mirrors that used in other disciplinary contexts. The first step, which is a threshold question, requires deliberative judgment on the part of the Tribunal whether it is satisfied that the consequence(s) relied upon would be “likely” to follow if no order was made. The second step is often described as a discretionary exercise after the first threshold has been met.

[34] In terms of what “likely” means, this means that there must be an “appreciable” or “real” risk. Consistent with the approach taken in *CAC v Teacher*,¹² we have adopted the meaning of “likely” described by the Court of Appeal in *R v W*.¹³ The Court said there that “real”, “appreciable”, “substantial” and “serious” are all qualifying adjectives for “likely”. They bring out that the risk or possibility is one that must not be fanciful and cannot be discounted.

[35] In deciding whether there is a real risk, the Tribunal must come to a judicial decision on the evidence before it. This does not impose a persuasive burden on the party seeking suppression. If so satisfied, the Tribunal must determine whether it is proper for the presumption to be displaced. This requires the Tribunal to consider, “the more general need to strike a balance between open justice considerations and the interests of the party who seeks suppression”.¹⁴

[36] In *NZTDT 2016/27*, the Tribunal acknowledged what the Court of Appeal said in *Y v Attorney-General*.¹⁵ While a balance must be struck between open justice considerations and the interests of a party who seeks suppression, “[A] professional person facing a disciplinary

¹¹ *CAC v Finch* NZTDT 2016/11, at [14] to [18].

¹² *CAC v Teacher* NZTDT 2016/68, at [46].

¹³ *R v W* [1998] 1 NZLR 35 (CA).

¹⁴ *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2012] NZSC 4, at [3].

¹⁵ *Y v Attorney-General* [2016] NZCA 474, [2016] NZFLR 911, [2016] NZAR 1512, (2016) 23 PRNZ 452.

charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure”.¹⁶

[37] The Court of Appeal in *X v Standards Committee (No 1) of the New Zealand Law Society* similarly stated:¹⁷

The public interest and open justice principles generally favour the publication of the names of practitioners facing disciplinary charges so that existing and prospective clients of the practitioner may make informed choices about who is to represent them. That principle is well established in the disciplinary context and has been recently confirmed in *Rowley*.

[38] The High Court in *J v New Zealand Institute of Chartered Accountants Appeals Council* touched on the same point again, in a chartered accountant’s disciplinary decision.¹⁸ Gwynn J stated:

[85] Publication decisions in disciplinary cases are inevitably fact-specific, requiring the weighing of the public interest with the particular interests of any person in the context of the facts of the case under review. There is not a single universally applicable threshold. The degree of impact on the interests of any person required to make non-publication appropriate will lessen as does the degree of public interest militating in favour of publication (for instance, where a practitioner is unlikely to repeat an isolated error). Nonetheless, because of the public interest factors underpinning publication of professional disciplinary decisions, that standard will generally be high.

[86] I do not consider the use of the word “appropriate” in r 13.62 adds content to the test usually applied in the civil jurisdiction or sets a threshold lower than that applying in the civil jurisdiction. The rule is broad and sets out neither a specific threshold nor mandatory specific considerations. The question will simply be, having regard to the public interest and the interests of the affected parties, what is appropriate in the particular circumstances.

[39] Although teachers do not have “clients” per se, we consider that the principle is of equal application for practitioners in the teaching field given that they are trusted to work closely with children.

[40] We would also add that although the standard in this jurisdiction is (as noted in *Finch*) in statutory terms lower than the standard found in the criminal jurisdiction,¹⁹ at the same time the professional jurisdiction differs from the criminal given the extra layer of public interest in open justice for professions and professionals. Hence the “general favouring” of naming practitioners, as noted in the decisions of *Y*, *X* and *J* (above).

¹⁶ At [32].

¹⁷ *X v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676 at [18].

¹⁸ *J v New Zealand Institute of Chartered Accountants Appeals Council* [2020] NZHC 1566.

¹⁹ “Extreme hardship” (to the applicant), per s 200(2)(a) Criminal Procedure Act 2011.

[41] We turn now to the publication issues before us.

Learners A and B

[42] We have already made permanent non-publication orders regarding the names of these students. We add to that the country they are from (i.e. [REDACTED]).

Mr [REDACTED]

[43] Mr [REDACTED] has advanced a range of information to us regarding health and welfare risks to him and his family if his name was published.

[44] We do not need to repeat that information at length. We consider that the risks are real and appreciable, particularly in the context of the conduct in this case.

[45] We consider that it is proper in all of the circumstances of this case and of Mr [REDACTED] to grant final and permanent non-publication of his name. To ensure this is not undermined, that will extend to the name of his employer, the type of teaching he was doing, and the name of the high school that the foreign students were going to attend. That will also include what city this occurred in, to avoid easy identification of the school and unravelling from there.

[46] As part of considering publication, we were however concerned as to whether Mr [REDACTED] could continue to have students on a home-school basis, and how non-publication might enable further potential activity without warning. In answer to that, the parties have jointly provided further information to dispel the issue. Mr [REDACTED] has provided an undertaking to this Tribunal that he will not have any homestay students again. The parties have also noted that there is a regulatory requirement (Pastoral Care of Tertiary and International Learners Code of Practice 2021) which would result in a police vetting of Mr [REDACTED] should he apply to carry out homestay services. And in turn, the Police formally warned Mr [REDACTED] and such records will still arise on a vetting check. We are therefore satisfied that this is a satisfactory set of measures and that non-publication will not shelter Mr [REDACTED] or enable him to recreate this situation

Costs

[47] The CAC is entitled to costs. Costs are low given no external counsel were used. The costs claim at 40% of costs is \$1794, which is entirely reasonable and is now ordered

[48] Tribunal costs are fixed at \$1500. 40% is \$600 which is also now ordered.



Tim Mackenzie

Deputy-Chair of the New Zealand Teacher's
Disciplinary Tribunal

IN THE MATTER OF the Education and Training Act 2020

AND

IN THE MATTER OF an inquiry by the New Zealand Teachers Disciplinary Tribunal of the Teaching Council of Aotearoa New Zealand into the conduct of [REDACTED] of [REDACTED] Registered Teacher (Registration Number [REDACTED])

AGREED SUMMARY OF FACTS

1. The respondent, [REDACTED] is a registered teacher. Mr [REDACTED] was first registered on 16 January 2001 and held a Full practising certificate until it expired on 27 February 2025. Mr [REDACTED] has not applied to renew his practicing certificate.
2. During the relevant time period, Mr [REDACTED] was employed as a relief teacher at [REDACTED]
3. On 11 March 2024 the Teaching Council (**the Council**) received a mandatory report filed by [REDACTED] Principal of [REDACTED] (**the School**).
4. The mandatory report alleged that Mr [REDACTED] had inappropriately touched a [REDACTED] exchange student who was staying at his home at the time, and attending the School as an exchange student.

Background

5. Mr [REDACTED] lives with his wife and their two children, a daughter aged 12 and a son aged 10. Mr [REDACTED] wife is originally from [REDACTED]. Mr [REDACTED] and his family have been involved in providing homestay accommodation to international students for the last 15 years.

6. **Learner A** is from [REDACTED] In 2024 Learner A travelled to New Zealand as an international student for one term. She arrived in New Zealand in the last week of January 2024. She was 16 years old.
7. On or about 28 January 2025, Learner A arrived at her homestay family address (Mr [REDACTED] home) along with a second [REDACTED] exchange student (**Learner B**). Learner A and Learner B were to stay with Mr [REDACTED] and his family for the first three nights after landing in New Zealand and then stay full time at the School hostel.
8. At the request of Learner A and Learner B, it was agreed with the School that they would stay at Mr [REDACTED] address for the weekend of 9 to 11 February 2024.

Charge

9. On 10 February 2024, a Saturday, Learner A and Learner B were at Mr [REDACTED] home.
10. Learner A and Learner B usually went to bed at around 10pm. However, as they had made a special request to stay with Mr [REDACTED] and his family, earlier in the day, in a discussion that included his wife, Mr [REDACTED] told them that they could stay up late since they "...took a special effort to come here so don't stay in your rooms all the time."
11. During the evening Mr [REDACTED] his wife, their two children, and Learner A and Learner B were playing a card game on the floor of the lounge. At approximately 9 pm, the [REDACTED] two children went to bed.
12. Mr [REDACTED] and Learner A and Learner B decided to watch a film called *Passengers* together. At around 9.30pm, Mr [REDACTED] wife went upstairs as she was not interested in the movie.
13. While watching the movie, both learners sat on a pair of couches arranged in an L shape. Learner B sat on the short side of the L and Learner A on the long

side, Mr [REDACTED] sat on the floor in front of where Learner A was sitting. During the movie, Learner A left to have a bath, and when she returned Mr [REDACTED] and Learner B were still watching the television in the same positions as when she left.

14. Learner A sat back down on the couch and was holding a cushion. Learner B was playing on her phone, which she was holding behind a cushion.
15. Around the time that the movie Passenger was finishing, Mr [REDACTED] saw that Learner A had gone to sleep. He reached across and shook her foot to wake her and told her that the film had about 10 minutes left. Learner A remained sitting where she was, and Mr [REDACTED] began to touch Learner A's right leg starting from her ankle and moving up to above her knee. Learner A thought that Mr [REDACTED] was giving her a gentle massage and thought that the touching was very soft. After Mr [REDACTED] had touched her right leg from the ankle to below the knee, he moved to her left leg and repeated the same motions. Learner A was not wearing long trousers and Mr [REDACTED] was directly touching her skin on both legs.
16. At approximately 11.30 pm Learner B got up to go to her room as she was tired. Learner A remained where she was. Learner A felt that she could not get up as Mr [REDACTED] was touching her legs.
17. Mr [REDACTED] started to watch something else on the television and Learner A fell asleep. Mr [REDACTED] attempted to wake her at approximately 12 am. He moved to where she was sitting, and combed her hair with his fingers then stroked the side of her chin a couple of times with the back of his hand, while holding one of Learner A's hands, in an attempt to wake her up. Learner A felt uncomfortable.
18. Mr [REDACTED] offered to take Learner A to her room and told her to "watch her feet" while he walked behind her, guiding her to the room.

19. When Mr [REDACTED] and Learner A reached the room, Mr [REDACTED] entered the room with her. Mr [REDACTED] took Learner A over to her bed and proceeded to pull back the covers for Learner A, before closing the windows and blinds.
20. Once Learner A was in bed, Mr [REDACTED] pulled the covers over her and took Learner A's phone from her hand and placed it onto the bedside table. Mr [REDACTED] kissed Learner A on the forehead and then combed her hair with his fingers for a brief period of time before leaving the room.
21. Learner A felt uncomfortable as a result of the conduct. She spoke with other homestay students and upon realising that Mr [REDACTED] conduct was not normal she reported the incident to an international homestay student agent. Both Learner A and Learner B have since returned to [REDACTED].

Teacher's response

22. A CAC meeting was held on 14 November 2024. Mr [REDACTED] attended the meeting via AVL.
23. Mr [REDACTED] accepts the conduct and that it was not appropriate, but disputes any improper intention behind the conduct.



R Georgetti

Counsel for the CAC

Date: 30 June 2025



Respondent

Date: 24/6/25