

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Taylor

NZ Disciplinary Tribunal Decision 2017/41

Teacher's use of inappropriate force against a student results in censure and conditions on her registration.

Alison Leimata Taylor was teaching in a secondary school. In June 2016 at the time of the incident Ms Taylor was suffering from anxiety associated with migraine symptoms.

The incident involved a Year 9 student in Ms Taylor's class entering the classroom late and bouncing a ball. Ms Taylor became frustrated and ordered the student to leave the classroom. She then followed the student and as he continued to bounce the ball, she reached for the ball and attempted to slap it out of the student's hands. Inadvertently her hand made contact with the student's cheek.

Ms Taylor was angry with the student, she shouted at him and then grabbed him by the collar of his shirt and forced him to move, pushing him against a wall. Three other students witnessed the incident.

The student went home and told his parents who raised their concerns with the school. Ms Taylor was then away on sick leave for stress and anxiety for approximately two weeks. On her return she had little recall of the incident but said that the student was 'rude and inconsiderate'. She admitted to being angry with him, yelling at him and reaching for the ball to slap it out of his hands. She remembered touching the student.

The incident was referred to the Teaching Council's Complaints Assessment Committee (CAC) and then investigated by the Impairment Committee. The CAC found there was serious misconduct and the matter was then referred to the New Zealand Teachers Disciplinary Tribunal (Tribunal).

The CAC submitted an Impairment Committee report at the hearing, and it stated that Ms Taylor had been suffering from anxiety associated with migraine symptoms at the time of the incident, but this health issue had now been resolved. Ms Taylor had reduced her hours to part time, was undertaking medical treatment and following advice, was on medication.

Ms Taylor submitted that the reason for her use of force occurred as a result of an illness. The Tribunal found that Ms Taylor's actions amounted to serious misconduct, stating that her actions were "an inappropriate use of force for the purposes of correction or punishment in breach of section 139A of the Education Act."

The Tribunal found that there was clear evidence of impairment at the time of the incident, but that Ms Taylor was no longer impaired and that she had taken steps to avoid getting into a condition where there would be a similar lack of control. The Tribunal censured Ms Taylor and imposed a condition on her registration that for a period of three years after the date of the decision she must supply a copy of this decision to any future employer. The register will also be annotated for three years. She was ordered to pay 30 percent costs.



This BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2017/41

UNDER the Education Act 1989

IN THE MATTER of a charge referred by the Complaints Assessment Committee to the New Zealand Teachers Disciplinary Tribunal

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

AND **Alison Leimata Taylor, registered teacher, teacher registration 165715**

Respondent

DECISION OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

HEARING: 15 May 2018 - on the papers

TRIBUNAL: John Hannan (Deputy Chair), Graham Gilbert and Simon Williams

DECISION: 8 November 2018

COUNSEL: Laura Hann/Jamie O'Sullivan for Complainant
Dzintra King for Respondent

Introduction

1. By notice of charge dated 13 December 2017 the CAC charged the respondent with serious misconduct in accordance with section 401 of the Education Act 1989.
2. The particulars are that on 23 June 2016 the respondent grabbed a student who was misbehaving by the collar of his shirt and physically forced him to move.
3. This conduct is alleged to amount to serious misconduct under section 378 of the Education Act and Rules 9(1)(a), (n) and/or (o) of the Education Council Rules 2016.
4. At a prehearing conference 14 February 2018 the Deputy Chair ordered on an interim basis that no person should publish the name or any details capable of identifying the respondent. The order was to remain in effect until 20 February and would expire unless by that time the respondent filed a formal application for name suppression with appropriate supporting material. The respondent did file an application for interim name suppression with a supporting affidavit and so the interim suppression order remained in effect. However the respondent has not applied for a permanent order, so the interim orders now lapse.

Facts

5. The respondent and the CAC agreed a summary of facts.
6. On 23 June 2016 the respondent grabbed a student by the collar of his shirt and physically forced him to move.
7. This student was a year 9 student in the respondent's class. This was an English class. He had entered the classroom late and was bouncing a basketball.
8. The respondent became frustrated with the student and ordered him to leave the classroom.
9. The respondent followed the student and as he continued to bounce the ball, she reached for the ball and attempted to slap it out of the student's hands. Inadvertently her hand contacted the student's cheek.
10. The respondent was angry at the student. She shouted at him and then grabbed him by the collar of his shirt and forced him to move, pushing him against a wall.
11. This incident was witnessed by three other students who confirmed the student was grabbed by the collar, by the respondent, and forced to move.

12. The student told his parents about what had happened. The student's parents then raised their concerns with the Deputy Principal at the school.
13. The respondent was away on sick leave from 24 June 2016 until 8 July 2016 due to stress and anxiety.
14. On her return to school several weeks later the respondent had little recall of the incident but remembered at the time of the incident telling the student that "he was rude and inconsiderate", being angry with him, yelling at him and reaching for the ball to slap the ball out of his hands. She also remembered touching the student.
15. The respondent was asked about the incident and said that she did not remember what had occurred other than as set out in the immediately preceding paragraph.
16. In response to submissions from the respondent and an affidavit from the respondent, the CAC placed before the Tribunal an Impairment Committee report, drafted by the Impairment Committee chair, in relation to the respondent, dated 2 October 2017.
17. This report noted that the respondent is 54 years old. It stated that the case had not been referred to the full Impairment Committee, and concluded that the respondent was not suffering from an impairment. However it did conclude that the respondent was suffering from an impairment at the time of the events in question, which the Impairment Committee report states to be "confirmed as anxiety with associated migraine symptoms". It said these issues are now well managed.
18. The Impairment Committee report referred to a report from the respondent's GP dated 30 May 2017 which confirmed that the stress, anxiety and migraines began in the middle of 2016 and have been managed through medical support, medication, counselling and an adjustment to work/life balance. The GP expressed the opinion that all medical issues have been addressed and are well controlled.
19. The Impairment Committee report went on to note that the respondent is now working part-time at the school and that her doctor is supportive of this.
20. The Impairment Committee made recommendations for the respondent to continue her engagement with medical providers, continue to take medications and other treatments as required, and continue to work part-time and only increase any working hours in consultation with her employer and GP to ensure that any additional support can be provided as required.
21. The Impairment Committee report also contained additional factual details about the incident itself, but these have not been admitted by the respondent and so the

Tribunal considers it inappropriate to recount those facts or to base its decision on them.

22. It is worth noting in particular that the Impairment Committee report states that the respondent "has demonstrated consistently good insight into her health and wellbeing and how to manage these".
23. The respondent filed an affidavit which annexed a letter of support from the principal of the school at which she worked and in which the incident occurred. This was a positive letter noting that the respondent was always focussed on creating a learning environment that centred on students learning needs. It noted that "In English, [the respondent] did not always have the senior classes of motivated students who appreciated her enthusiasm, but she was always focussed on creating a learning environment that centred on students learning needs". It further reported that outside of the classroom the respondent was unfailingly positive and involved herself in extracurricular activities of many kinds. It noted that in recent times the respondent's health has not always been of the best but the school has worked with her to ensure that her workload is manageable and that she had as at the start of 2017 moved to a part-time teaching position at her own request.
24. The letter noted that the respondent resigned from the school at the beginning of 2018, returning as a day relief teacher. The principal stated that she fully supported the respondent's work within the school. She concluded "there are not too many teachers with the levels of passion and compassion that [the respondent] has, and we are fortunate to have had her on the staff of the college.
25. The respondent's affidavit went on to say that she has consistently taken responsibility and apologised for what had happened. She said that although she does not recall the particular actions which are the basis of the notice of charge, her actions have caused her not only shame but real guilt.
26. The respondent reported taking at least 6-8 weeks or more leave, going to the doctor on at least five occasions, to three counsellors, and a priest, and being observed and advised by her HOD for the remainder of the year. She stated that she had requested professional development and had attended and implemented all of the expectations of the school's new PB4L PLD programme.
27. The respondent also engaged in additional training and had sought additional support for recommended classroom management techniques.

28. The CAC filed submissions in response noting that while the respondent had undergone additional training, an external course at the local marae to further develop her Te Reo Maori, there was no suggested nexus with rehabilitative concerns or with prevention techniques to avoid such an incident recurring. The CAC therefore did not accept that there had been additional training relevant to the mitigation of the respondent's risks. The CAC also submitted that the Tribunal could not properly conclude on the material put before it that the respondent's medical issues were causative of her conduct. It also suggested that she had failed to take full responsibility for her behaviour, by suggesting her actions were not deliberate or intended.

Submissions of CAC

29. The CAC submitted that this conduct was a relatively clear-cut case of serious misconduct, meeting all three limbs under section 378(1) of the Education Act, and of the required character and severity under Rule 9 of the Rules. Specifically, the CAC submitted that the conduct amounted to physical abuse, was otherwise an act or omission that could be the subject of prosecution for an offence punishable by imprisonment for a term of three months or more, and was an act or omission that was likely to bring discredit to the profession.
30. The CAC referred to a number of cases and in particular *CAC v Mackey* NZTDT 2016/60 where it was noted that the use of physical force on students for correction is never acceptable. It noted the observations in *CAC v Rowlingson* NZTDT 2015/54 that whether use of physical force amounts to serious misconduct is context-dependent. A tap or kick (in particular a gentle tap or kick) for the purpose of getting a student's attention might not constitute serious misconduct. A forceful or robust kick, by contrast, would be serious misconduct.
31. The CAC also referred to section 139A of the Education Act 1989, and noted that force administered for the purposes of correction or punishment must be regarded as abusive and would constitute a technical assault.
32. Similarly the CAC submitted that the conduct here was of a character and severity which met the reporting criteria in Rule 9 of the Rules. The force was intentionally applied, and for corrective purposes. The CAC submitted that the respondent's conduct was analogous to the teacher's conduct in *Mackey*. The respondent here used physical force against a student which included holding a student up against a wall. It was relatively sustained and intense and contained an element of violence. It apparently occurred for the purpose of correction. It occurred in front of and was

witnessed by the rest of the class. It had the potential to adversely affect the wellbeing and learning of the relevant student but also of the other students in the classroom.

33. The CAC submitted this was a clear breach of Rule 9 (1) (a) in that it was intentional application of force for a corrective purpose, prohibited by section 139A. The force involved meet the definition of an assault on a child under section 194 of the Crimes Act 1961, and the use of force was the consequence of the respondent becoming angry and losing self-control. The duration and intensity of the assault meant it had a violent element. Assault on a child under section 194 of the Crimes Act has a maximum penalty of two years imprisonment and accordingly Rule 9 (1) (n) is triggered.
34. As well, the CAC submitted that the respondent's conduct brought, or would be likely to bring, discredit to the teaching profession under Rule 9(1) (o).
35. The CAC submitted that an appropriate starting point in respect of penalty would be cancellation of registration on the basis that section 377 of the Education Act requires the Education Council (now the Teaching Council) to ensure that students are provided with a safe learning environment... The CAC also referred to the Vulnerable Children Act 2014. The CAC referred to NZTDT 2016/60 where the Tribunal accepted that the Vulnerable Children Act focus on safety mirrors a key factor the Tribunal must consider when it decides whether a teacher who has engaged in behaviour prohibited by the Rules is fit to remain a member of the profession.
36. The CAC submitted that the present case is finely balanced in terms of assessing the least restrictive and reasonable disciplinary response, while having regard to the gravity of the respondent's conduct. It characterised the respondent's conduct in this case as serious. The CAC also submitted that in assessing the least punitive option which meets the seriousness of the case the Tribunal would need to consider the respondent's degree of insight into what triggered her to assault the student, any remorse, and any steps or training which she has undertaken to eliminate the risk of repetition.
37. The CAC also requested an order under section 405 (6) of the Education Act for non-publication of the name and identifying details of the student involved.

Respondent's submissions

38. The submissions from the respondent focused on the impairment committee report and emphasised that the respondent was suffering impairment at the time of the

incident. There was a submission that the respondent had used force as a result of illness which adversely affected her actions and impaired her self-awareness and control. The submissions went so far as to suggest that this might be a situation where it could be said that, like a person who has an epileptic fit, the respondent's loss of self-control was due to medical reasons and not due to bad judgement or poor character.

39. The submissions argued that the respondent has undergone rehabilitation, additional training and supervision and does not need to be removed from the teaching environment to protect the public, there being no evidence that she is an ongoing risk to students.
40. The submissions also suggested that there are a number of mitigating factors, namely insight, remorse, undertaking medical treatment and following advice, taking medication, and working on a half-time basis in 2017. The submission sought an outcome that would enable the respondent to continue to teach.
41. We have noted above the material put forward by the CAC in response to the submission that the respondent's loss of self-control was due to medical reasons. The CAC pointed out that the Impairment Report did not find that the respondent's use of force "occurred as a result of an illness".

Decision

Serious Misconduct

42. The Tribunal concludes that serious misconduct is clearly established. This was a deliberate use of force in response to student misbehaviour. It is clear that the respondent lost self-control. Grabbing a student by the collar and pushing them against a wall in these circumstances can in no way be regarded as anything other than an inappropriate use of force for the purposes of correction or punishment in breach of section 139A of the Education Act.
43. There is no evidence of any actual adverse effect upon the student concerned, but such conduct must be seen as at least likely to adversely affect the well-being and learning of either the student, or other students in the class.
44. Such a loss of self-control does reflect adversely upon the respondent's fitness to be a teacher and may bring the profession into disrepute, given the clear rule stated in section 139A Education Act. 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 behaviour. Teachers who are fit to teach are capable of exercising a level of self-control which avoids reactive use of force in this way, and members of the public would expect that to be the case.

45. The physical contact was far from trivial and must be regarded as having the required character and severity under Rule 9. This must be regarded as being unjustified and unreasonable physical force and so amounts to physical abuse under Rule 9(1)(a). Further, it is an assault on a child under section 194 of the Crimes Act, and so in breach of Rule 9(1)(n). Finally, it is likely to bring discredit to the profession under Rule 9(1)(o).

Penalty

46. Despite clearly amounting to serious misconduct, the use of force here is not at the higher end of the spectrum. This was not a kick or a punch or similar blow. The respondent was apparently suffering from some level of impairment at the time of the incident, and the respondent has taken rehabilitative steps. But neither is it at the lowest end of the spectrum.
47. The considerations in professional disciplinary proceedings in relation to penalty are protection of the public through the provision of a safe learning environment for students, and the maintenance of professional standards and the public's confidence in the profession.
48. Numerous cases of the Tribunal emphasise that the Tribunal must also keep in mind rehabilitative possibilities. In situations where there seems a real prospect of rehabilitation and/or the breach of standards can be at least partly contextually explained, an outcome focused on the rehabilitative element may be more appropriate than a more condign penalty such as deregistration.
49. The Tribunal does not consider it is necessary to remove the respondent from the teaching environment. She has herself taken steps both by way of training and support, and also changing her work life balance, to avoid the type of stress and anxiety which seem to have formed a significant part of the context for this misconduct.
50. The specific facts of the situation are quite similar to the facts in *CAC v Mackey*; the respondent in that case pushed a student against a wall, with her forearm across the student's chest to hold her in place. She was reported as having held the student by the scruff of her neck and having pushed her against a glass door. This followed a heated argument between the student and Ms Mackey.

51. In *Mackey* the Tribunal said that it was dealing with a finely balanced case in terms of assessing what the least restrictive reasonable penalty should be. The Tribunal there concluded "by very narrow margin" that a penalty short of cancellation would achieve the primary purpose of protecting the public and also the other objectives of disciplinary proceedings of maintaining professional standards, punishing respondents and supporting ongoing rehabilitation. In *Mackey* the respondent had taken steps to minimise the risk of repetition and the Tribunal was satisfied that the respondent had genuine insight into what led her to physically abuse the student.
52. In *Mackey* the respondent was censured, a condition that she undertake supervision/mentoring for 18 months was imposed, and also a condition that she undertake such professional learning and development as the Education Council's Senior Manager of Professional Responsibility concluded might be required. The register was annotated.
53. In the present case, the evidence of impairment at the time of the incident is quite clear. There is also evidence that the respondent is no longer impaired, and she has clearly taken appropriate steps to avoid getting into a condition where a similar loss of control would be likely to occur.
54. The Tribunal therefore concludes that the appropriate outcome is that the respondent should be censured. It will be a condition of the respondent's registration that for a period of three years after the date of this decision she must supply a copy of this decision to any future employer and provide written confirmation to the Senior Manager Professional Responsibility of the Teaching Council that she has done so. We also consider that it is appropriate that the register be annotated for a period of three years. We do not think it is necessary to impose any conditions to undergo professional development or training as it would appear the respondent has undertaken a reasonable program in response to this incident.
55. As to costs, the Tribunal notes that the respondent has cooperated and made appropriate admissions, so that the matter can be dealt with on the papers. We also note what the respondent says in her affidavit as to the cost to her of her decision to move to part-time work. She says that her decision to work part-time last year has cost approximately \$40,000. Her resignation at the start of this year has cost her at least a further four months' salary to May. She says she is usually the sole income earner due to her husband's head injury of more than 20 years ago. Given those factors, and also the impairment which seems to have been a significant contributing factor to the incident, the Tribunal will set the respondent's contribution to costs at

30% of the CAC's and the Tribunal's costs. We do not at this stage have before us schedules of those costs.

56. We therefore order that the respondent pay 30% of the CAC's actual and reasonable costs and 30% of the Tribunal's scheduled costs. If there is a dispute as to the amount of the actual and reasonable costs of either the CAC or the Tribunal and costs need to be fixed as a dollar sum, the Tribunal delegates to the Deputy Chair the task of fixing the costs the respondent is to pay.

Orders

57. The Tribunal orders as follows:

- (a) The respondent is censured;
- (b) It will be a condition of the respondent's registration for a period of three years after the date of this decision that she supplies a copy of this decision to any future employer and provides written confirmation to the Senior Manager Professional Responsibility of the Teaching Council that she has done so.
- (c) The register is to be annotated for a period of three years;
- (d) The respondent is to pay 30% of the CAC's actual and reasonable costs and 30% of the Tribunal's scheduled costs. If there is a dispute as to the amount of these costs and they must be fixed in a dollar sum, the Tribunal delegates to the Deputy chair the task of fixing such costs;
- (e) Publication of the name of the student and any details capable of identifying the student is prohibited.

Date: 8 November 2018


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JGH Hannan
Deputy Chairperson

NOTICE - Right of Appeal under section 409 of the Education Act 1989

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 402(2) or 404 of the Education Act 1989 may appeal to a District Court.
2. An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
3. Subsections (3) – (6) of section 356 apply to every appeal as if it were an appeal under subsection (1) of section 356.