

Complaints Assessment Committee (CAC) v Hughes

NZ Disciplinary Tribunal Decision 2018/51

Teacher receives censure and conditions on his practising certificate after failing to demonstrate a commitment to providing high-quality and effective teaching.

Teacher Mr Gabriel Hughes was employed at a school. He used offensive language in class and toward students, and verbally criticised and humiliated them. He also acted out in frustration and stress by punching and headbutting the wall, slamming the classroom door and leaving his students unsupervised. The case was referred by the Teaching Council's Complaints Assessment Committee (CAC) to the New Zealand Teachers Disciplinary Tribunal (Tribunal).

The Tribunal found Mr Hughes behaviour to be serious misconduct as it was likely to negatively affect the wellbeing and learning of students. His actions reflected adversely on his fitness to be a teacher and tended to bring discredit to the profession. In terms of the verbal putdowns, the Tribunal considered his conduct could be regarded as psychological abuse.

The Tribunal noted that Mr Hughes was a relatively new and inexperienced teacher. It considered factors such as his remorse; and that he had demonstrated some insight into his behaviour and acknowledged from the outset that his actions were serious misconduct. He co-operated with the disciplinary process and on his own initiative has undergone some therapy sessions to address the causes of his unprofessional behaviour.

Given these circumstances, the Tribunal censured Mr Hughes and ordered an annotation of the register, and conditions imposed on his practising certificate. These are, that for a period of one year after he resumes teaching, Mr Hughes undergoes mentoring (directed at helping with skills of classroom management and management of stress levels) and appropriate professional development. Also, for a period of two years from the date of the Tribunal's decision, he is required to provide a copy of the decision to prospective employers. Mr Hughes was also ordered to pay 40 percent of the CAC's and Tribunal's costs.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018/52

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 **Gabriel Emilio Hughes, of Auckland registered teacher, teacher registration 353662**

Respondent

DECISION OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

HEARING: 13 November 2018 (on the papers)

TRIBUNAL: John Hannan (Deputy Chair), Maria Johnson, Patrick Walsh

DECISION: 7 December 2018

COUNSEL: E Mok for Complainant
Respondent in person

Introduction

1. By notice of charge dated 28 August 2018 the Complaints Assessment Committee charged that the respondent engaged in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers, in accordance with section 401 of the Education Act 1989.
2. The particulars of the charge are that the respondent on various dates:
 - (a) Swore at students in his class, and/or swore in the presence of students in his class; and/or
 - (b) Punched a wall in his classroom in the presence of students; and/or
 - (c) Slammed the door in his classroom in the presence of students; and/or
 - (d) Used verbal putdowns to students in his year 13 class, comparing them to his year 9 class in a negative way; and/or
 - (e) Head butted a wall in his classroom; and/or
 - (f) Left the classroom unattended when he was frustrated with students.
3. The CAC alleges that this conduct amounts to serious misconduct under section 378 of the Education Act and Rule 9 (1) (c) and/or (o) of the Teaching Council rules 2016 or is conduct otherwise entitling the Disciplinary Tribunal to exercise its powers under section 404 of the Act.
4. An agreed summary of facts has been signed and filed, dated 24 September 2018. The CAC has provided submissions on liability and penalty. The respondent has provided a letter to the Disciplinary Tribunal expressing his views.

Agreed summary of facts

5. The Agreed Summary of Facts is as follows:

1. At all material times, Gabriel Emilio Hughes (respondent) was a provisionally registered teacher working at Onehunga High School (School).
2. The respondent taught at the School between May 2015 and September 2017.

Allegation 1: Swearing in class

3. On a number of occasions, the respondent swore at students in his Year 13 class and/or in the presence of students in his class, saying things like "fuck" and calling students "fucking useless". Student D said the respondent is "always cussing and stuff, saying things like 'no shit'", and that there was "always cussing in his words, he like tries to act young".
4. Through this conduct, the respondent breached clause 1.3 of the Code of Professional Responsibility (Code), which requires teachers to demonstrate a high standard of professional behaviour and integrity.
5. In a response to an investigator at the Education Council on 30 April 2018, the respondent stated that he had "no excuse" for swearing, and that "my colloquial way of speaking drifted in to my classroom way of speaking, however I never attempted to direct offensive language at any student, they were slips of the tongue, and not intended to cause harm."

Allegation 2; Punching a wall and slamming a door in his class

6. On one occasion, after a student's speech in class, the respondent punched a wall in his classroom and slammed the door to the classroom in the presence of students. Students A and B reported that the respondent got angry after the speech and then "stormed out, punching the wall by the door and then slamming the door real hard".
7. Through this conduct, the respondent breached clause 1.3 of the Code, and also clause 2.1 of the Code, which requires teachers to promote the wellbeing of learners.
8. In a response to the investigator on 30 April 2017, the respondent stated: "I have punched a wall out of frustration after all the students had left class and were out of eye shot. I have slammed the door in front of students, but I have no recollection of hitting anything out of anger in their presence".

Allegation 3: Using putdowns to students in his class

9. On one occasion, the respondent used verbal putdowns to students in his Year 13 class, comparing them to students in younger year levels in a negative way.
10. Students A and B said that the putdowns happened in response to students not understanding the content in class. They said that, if students did not know the answer to questions, the respondent would "use a face (indicating disgust)" and use put downs. This resulted in most

students not asking questions in class. They said the respondent said things like "that's something my Year 10s would say" or "my Year 9s do this".

11. Student A said that, after she had performed a speech, the respondent had told her that it was a "waste of time because of how bad it was and that she was useless".
12. Student D also said the respondent said things like "I'll come down on you like a ton of bricks", and called the students "muppets".
13. By engaging in the above conduct, the respondent breached clause 2.1 of the Code.
14. In a response to the investigator on 30 April 2017, the respondent said that, on the occasion referred to above at paragraphs 7 and 8, he had become very frustrated with the students' work on a task, and that he "had circled the class several times, given assistance to groups who were stuck, but the task was still not near completion. Regrettably, my reaction was to draw comparisons between them, and my year 9s who had completed the task".

Allegation 4: Head butting a wall in classroom

15. On one occasion in class, the respondent lost his temper and head butted a wall in his classroom a number of times. Students A and B reported that the respondent's actions were not accidental and that the respondent was angry.
16. By engaging in the above conduct, the respondent breached clauses 1.3 and 2.1 of the Code.
17. In a response to the investigator on 30 April 2017, the respondent stated that he had head butted a wall in his classroom, but that this had been intended as a "comedic representation of his frustration", not a "violent action".

Allegation 5: Leaving classroom unattended after becoming frustrated with students

18. On a number of occasions, the respondent left the classroom unattended when he was frustrated with students.
19. Students A and B stated that "on numerous occasions [the respondent] would leave class because he was so frustrated with [the class] and slam the door and go up the stairs to the resource room".
20. Through the above conduct, the respondent breached clauses 1.3 and 2.1 of the Code.
21. In a response to the investigator on 30 April 2017, the respondent said "the trips to the resource room were never long, 2 minutes at the maximum, and were used in an attempt, both to cool off and seek advice from my HOD [head of department] or other teachers as to what actions I should take next".

Mandatory report

22. On 10 August 2017, three students from the respondent's Year 13 class raised concerns about the respondent's conduct with the School.

23. The School undertook an investigation into the respondent's conduct.
24. The respondent resigned from the School on 8 September 2017.
25. On 29 September 2017, the School filed a mandatory report with the Education Council regarding the respondent's conduct.

Further response

26. In addition to the above explanations, the respondent said in a response to the investigator on 28 March 2018 that he "was under a lot of stress during that time period, and unfortunately my students were forced to endure my inability to manage it". The respondent acknowledged that "at the time I was not prioritising the safety and happiness of my students; these elements are absolutely critical to creating an environment where learning can take place, but rather, I was more concerned with keeping my own head above water – most regrettably at the cost of creating an environment that was detrimental to my students' learning".
 27. On 30 April 2018, the respondent advised the investigator that he undertaken therapy sessions with a psychologist to figure out the root of his anger and conduct, but was not currently seeing a psychologist.
 28. In an email dated 21 June 2018 to the investigator, the respondent's psychologist stated that it did not appear that the respondent suffered from an "ongoing anger problem", and that his display of anger towards the students "was symptomatic of his feelings of distress, stress, burnout and overwhelm" at the time. The psychologist stated that he and the respondent had worked through stress management and work/life balance techniques, and that the respondent had "made numerous positive changes in his approaches and lifestyle that will reduce the likelihood of further anger related concerns in the future".
6. Mr Hughes sent a letter to the Disciplinary Tribunal. He said that he accepts the charges presented by the CAC and that he accepts that his behaviour did amount to serious misconduct.
 7. He expressed his "tremendous remorse" for his actions and said that he deeply regrets that he has had a detrimental impact on his students learning, safety and emotional well-being.
 8. He said that he is willing to engage without reservation with any conditions that the Tribunal chooses to impose on his practising certificate. He said that regardless of whatever penalty is imposed, he intends to do everything that he can to ensure that

his emotional and mental well-being are in good shape in order to practice teaching to the best of his ability. He also said that he will temporarily limit other factors which could potentially increase stress levels, such as unnecessary extracurricular activities or leadership roles. He said also that he will request further supervision and mentoring to ensure he meets the standards laid out in the Code of Professional Responsibility.

9. Finally he said he is a passionate and committed teacher, and wishes to redeem himself from the present misconduct. He believes that he has the capacity to perform at a much higher standard, asking for an opportunity to continue to pursue that goal.

Submissions

10. The CAC submitted that the respondent's conduct meets each limb of the definition of serious misconduct in section 378 of the Education Act. It was likely to adversely affect the well-being of students. His inability to manage his temper reflects adversely on his fitness to be a teacher. His use of inappropriate language exemplifies a lack of professionalism and suggests he is not aware of how to appropriately interact with students.
11. The CAC further submitted that this conduct was of a character and severity that meets the criteria for reporting serious misconduct in Rule 9 of the Teaching Council Rules 2016. Either it was psychological abuse within rule 9 (1) (c) or it was (o) an act or omission bringing, or likely to bring, discredit to the teaching profession.
12. The Tribunal referred to *CAC v Webster*¹ where it was said that swearing at students is "inexcusable" conduct that lowers the reputation and good standing of the teaching profession and will satisfy the criteria as to what constitutes harm to the repute or reputation of the profession set out in *Collie the Nursing Council of New Zealand*² in that reasonable members of the public, knowing the relevant circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the behaviour of the practitioner .
13. The CAC also submitted that engaging in verbal putdowns of students and leaving students unsupervised would also undermine the reputation and good standing of the profession.

¹ NZ TDT 2016-57 at [46]

² [2001] NZAR 74 at [28]

14. The CAC also referred to the relevant clauses of the Code of Professional Responsibility; clause 1.3, requiring teachers to demonstrate a high standard of professional integrity and behaviour, and clause 2.1 requiring teachers to promote the well-being of learners. The guidance to the Code states that using inappropriate verbal or body language, for example aggressive or humiliating language, is an example of behaviour that does not promote learners' well-being and may cause harm.
15. The CAC went on to make submissions as to penalty. The CAC referred again to *CAC v Webster* where a teacher engaged in similar behaviours including angrily yelling at students and swearing at students, including after being issued with a final warning by the school, and failed to engage with the disciplinary process. In that case the Tribunal considered it had no option but to order cancellation of registration. The Tribunal observed that ordinarily for conduct of this kind (i.e. absent the aggravating factors in *Webster*) some form of supervision or mentoring might be appropriate.
16. The CAC acknowledged that in the present case the respondent has fully engaged with the disciplinary process and has taken steps to address the issues underlining his conduct.
17. The CAC therefore considered that a penalty with a rehabilitative focus would meet the principles and purposes of disciplinary proceedings. It suggested conditions on the respondent's practising certificate requiring him to undergo mentoring and further training would be appropriate. It suggested that the following orders would be appropriate; censure, annotation of the register, the imposition of conditions requiring mentoring for a period of 12 months, regular reports to the Teaching Council by the mentor, completing a professional development course considered appropriate by the Manager, Professional Responsibility, at the Teaching Council, and a condition requiring the respondent to inform any prospective employers of the Tribunal's decision for a period of 2 years.

Decision

18. The respondent has accepted that this was serious misconduct, and the Tribunal finds serious misconduct established. The conduct was clearly capable of affecting, and at the least was likely to adversely affect, the well-being or learning of one or more students – several students thought it sufficiently serious to report it. It also reflects adversely on the respondent's fitness to be a teacher in particular his ability to cope with the ordinary stresses of classroom teaching. And, it clearly might bring the teaching profession into disrepute. It was extended conduct, not a one-off, and meets

the tests of character and severity under the Rule 9 of the Teaching Council rules. The conduct and the language addressed to students ("muppets", "useless") could be regarded as psychological abuse. It is certainly capable of bringing discredit to the teaching profession.

Penalty

19. The Tribunal ordinarily seeks the least restrictive penalty that the circumstances will support. It must consider all available options as set out in section 404(1) of the Education Act. It takes into account considerations of the protection of the public, the maintenance of professional standards, maintaining public confidence in the profession, and, to a lesser extent, the appropriate punishment. It will where appropriate prefer a rehabilitative outcome where the evidence presented and the information about the respondent suggest appropriate rehabilitative possibilities.
20. The Tribunal notes that at the time of the relevant conduct the respondent was a relatively newly registered and inexperienced teacher. He has no previous disciplinary history.
21. The respondent has expressed remorse and has demonstrated some insight into his conduct. He has acknowledged from the outset that he did not act appropriately and that his actions amount to serious misconduct.
22. He has cooperated with the disciplinary process.
23. The respondent has also completed some therapy sessions.
24. In these circumstances the Tribunal agrees with the outcomes suggested by the CAC.

Orders

25. The Tribunal makes the following orders:
 - (a) The respondent is censured;
 - (b) There is to be annotation of the register;
 - (c) Conditions are imposed on the respondent's practising certificate as follows:
 - (i) The respondent is to undergo mentoring for a period of 12 months once he resumes teaching. The mentor

is to provide regular reports to the Teaching Council. The mentoring is to be directed at assisting the respondent to develop, and monitor, his skills of classroom management and management of stress levels;

(ii) The respondent is to complete a professional development course on a topic, such as classroom management, considered appropriate by the Manager, Professional Responsibility, at the Teaching Council. This must be completed within 12 months of the respondent resuming teaching;

(iii) For a period of 2 years from the date of this decision the respondent is to provide a copy of this decision to any prospective employers.

Costs

26. The respondent has cooperated with the disciplinary process. He has agreed a summary of facts and there has not been any need for an in-person hearing. On that basis costs are set at 40% of the actual and reasonable costs of the CAC and 40% of the Tribunal's costs.
27. The respondent is ordered to pay 40% of the actual and reasonable costs of the CAC and 40% of the Tribunal's costs.
28. A schedule of the Tribunal's costs has been supplied showing total estimated expenditure of \$1145. 40% of that sum is \$458 and the respondent is ordered to pay that sum.
29. No schedule of costs has been received from the CAC. If the CAC and respondent cannot agree on the actual and reasonable costs (of which the respondent is to pay 40%) the Tribunal delegates to the Deputy chair that task of fixing such costs.

Date: 7 December 2018


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JGH Hannan
Deputy Chairperson
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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.