

## VICTORIAN INSTITUTE OF TEACHING

### DECISION AND REASONS OF THE FORMAL HEARING

**NUMBER:** 022

**REGISTERED TEACHER:** JENNIFER CHRISTINE BROOKEL

**PANEL MEMBERS**

Heather **SCHNAGL**, Chairperson

Cathie **IRELAND**, Registered Teacher

Anne **FARRELLY**, Registered Teacher

**ATTENDANCE:** The teacher was represented by Mr Robert Lancy of Counsel

Counsel Assisting: Ms Anne Sheehan with Ms C Pickett solicitor instructing

**DATE OF HEARING:** 14 July 2005

**DETERMINATION PURSUANT TO SECTION 42(2)**

On 1 September 2005, the Panel determined that a recommendation be made to the Council of the Victorian Institute of Teaching that if the teacher is granted provisional registration the following conditions should be placed on her registration:

1. That the teacher undertake four terms of teaching practice from the date she is granted provisional registration at the end of which must satisfactorily complete the evidence based process to demonstrate that she has met the professional standards for full registration.
2. That the teacher obtain a report from her current employer at the end of her present contract (2005) which comments on the teacher's conduct and fitness to teach

**EFFECT OF THE DECISION**

The effect of the decision is that the teacher is to remain provisionally registered for a further four terms.

## REASONS

### BACKGROUND

The teacher applied for registration with the Victorian Institute of Teaching (the Institute) as a teacher on 3 December 2002. The teacher's application was approved by the Council of the Institute on 19 March 2003 and she was granted provisional registration under section 12 of the *Victorian Institute of Teaching Act 2001* (the Act)

On 19 March 2005 the teacher's provisional registration expired. The teacher is now teaching in Western Australia. Pursuant to section 43 of the Act the Disciplinary Proceedings Committee (the Committee), a committee of the Institute Council decided for the purposes of the inquiry that the teacher was to be treated as if she were a registered teacher.

By letter dated 25 August 2004 Principal 1, Primary School 1 made a complaint against the teacher in relation to serious misconduct and fitness to teach. The complaint was lodged in accordance with section 26 of the Act.

On 6 October 2004 the Committee considered the complaint and decided that this matter should be referred for a preliminary investigation. The teacher was advised by letter dated 16 November 2004 that the matter would be referred for a preliminary investigation. On 4 January 2005 the report of the preliminary investigator was received by the Institute. The matter was again referred to the Committee and at its meeting on 19 January 2005 the Committee decided to hold a formal hearing. The teacher was sent a Notice of Formal Hearing dated 7 June 2005 with all relevant documents attached advising her that the formal hearing would be held on 14 July 2005.

The Notice of Formal Hearing set out the following allegations:

1. That the teacher disclosed to staff of the school in the staffroom and other public areas of the school that she participated in a 'swingers' lifestyle.
2. That in November 2003 the teacher held a party for a number of Year 6 students at the home of a friend. The party took place without the knowledge of the school.
3. That the teacher asked a 12 year old female student with an intellectual disability if she was sexually active.
4. That on Thursday 29 July 2004 the teacher allowed swearing in the classroom and swore in the classroom.
5. That on Friday 30 July 2004, following allegation (4) being raised with the teacher, the teacher became agitated. Before leaving the school the teacher rebuked another teacher in the playground in front of students. This involved screaming and use of the word 'fuck'. The teacher also accused a student of

getting her sacked. The teacher used inappropriate language with another member of staff before leaving the school.

The formal hearing was held on July 14 2005, adjourned until the references, hearing report and closing submission was received.

The issues to be determined in this matter are:

- Was there sufficient evidence to support any, some or all of the allegations made against the teacher
- If any, some or all of the allegations were proved whether this was sufficient to constitute serious misconduct and/or unfitness to teach and
- If so, what would be the appropriate penalty?

## THE LAW

The Disciplinary Proceedings are set out in Part 4 of the Act. Section 26 provides:

### **26. Powers of inquiry**

(1) *The Institute may in accordance with this Part inquire into any information it receives under section 27 or 28 or any complaint that provides evidence of the serious incompetence of a registered teacher, serious misconduct of a registered teacher or that a registered teacher is unfit to be a teacher.*

(2) *The Institute must in writing notify-*

(a) *the registered teacher; and*

(b) *the employer of the registered teacher; and*

(c) *the person who made the complaint--*

*of its determination to inquire or not to inquire into the registered teacher's competence or fitness to teach or the conduct of the registered teacher.*

The terms *serious misconduct* and *unfit to be a teacher* are not defined in the Act. The Panel was referred to case law regarding disciplinary proceedings in other jurisdictions.

According to the High Court in *Ziems v The Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279 the purposes of disciplinary proceedings in relation to a profession are:

- to protect the public
- to maintain proper standards of conduct for the profession, and
- to protect the reputation of the profession.

These procedures are not meant to punish the teacher although this may be an unintended consequence (see *New South Wales Bar Association v Evatt* (1968) 117 CLR 177). The purpose of these proceedings is to protect students in Victorian schools. A decision to deregister a teacher is very serious and requires great care (see *Victorian Lawyers RPA Ltd v Vodicka* (2000) VSC 272).

The standard of proof that applies in disciplinary proceedings is the *balance of probabilities*. The appropriate standard of proof that applies in civil matters was

considered in *Briginshaw v Briginshaw* (1938) 60 CLR 336 where the High Court said that the ordinary standard of proof applied *subject only to the rule of prudence that any tribunal should act with much care and caution before finding that a serious allegation ... is established.*

And later:-

*The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal.*

The observations of the High Court have been followed in numerous cases and in particular in relation to disciplinary proceedings (see *Barwick v Law Society of New South Wales* [2000] HCA 2, and *Murphy v The Bar Association of NSW*[2001] NSWSC 1191).

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct must be a substantial departure from the accepted standards for the teaching profession, and the departure must be the fault of the teacher (see *Parr v Nurses Board of Victoria* decided VCAT 2 December 1998)

The **test** set out in the case law is conduct:

*which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.* *Allinson v General Medical Council* [1891-4] All ER 768

A teacher's position is one of power and influence in relation to the student - a position of trust. The misconduct must reflect in a significant way on the suitability of the person to work as a teacher. It must illustrate attitudes or characteristics inconsistent with the moral qualities required of a teacher (see *Yelds v Nurses Tribunal & Ors* (2000) NSWSC 755; *New South Wales Bar association v Cummins* (2001) NSWCA 284.

The term *fit and proper person* is intended to cover conduct other than dishonesty and include significant impropriety, lack of integrity or bad faith. Persistent failure to meet a teacher's obligations to the education community shows a disregard for these obligations and not just carelessness, incompetence or lack of organisation. A failure by the teacher to understand that the conduct complained of was serious misconduct will indicate the teacher's unfitness to teach (see *Cameron v Bar Association of NSW*[2002] NSWSC 191 and *Marten v Disciplinary Committee of the Royal College of Veterinary Surgeons* [1965] 1 All ER 949).

## **DOCUMENTS CONSIDERED**

The Panel had available to it the following documents

- a. Witness statements by:
  - o Principal 1 dated 24 November 2004
  - o Deputy Principal 1 dated 24 November 2004

- Teacher 1 dated 24 November 2004
  - Teacher 2 dated 24 November 2004
  - Student 1 dated 24 November 2004
  - Student 2 dated 24 November 2004
- b. Statement by the teacher dated 3 December 2004

The following documents were tabled at the Formal Hearing on 14 July 2005:

- Primary School 1 – Staff Handbook & Timetable
- Primary School 1 – Staff Induction Manual
- Primary School 1 – Principal’s Feedback (Annual review) for the teacher – 2003

The following documents were requested by the Panel prior to making a determination

- The teacher’s hearing test report from Practitioner 1, the Clinic, dated 20 January 2005

The following documents were submitted to the Panel during the adjournment:

- Reference for the teacher – Principal 2, Primary School 2 dated 27 July 2005
- Reference for the teacher – Principal 3, Primary School 3 dated 8 August 2005
- Closing submissions from Counsel Assisting the Institute.

## **THE EVIDENCE**

At the commencement of the hearing, two of the five allegations, specifically allegations one and three, against the teacher were withdrawn. Hence the Panel only heard evidence regarding the remaining three allegations, allegations two, four and five.

The Panel heard evidence from:

Principal 1, Primary School 1  
 Assistant Principal 1, Primary School 1  
 Teacher 1, Primary School 1  
 Teacher 2, Primary School 1

### **Principal 1, Primary School 1**

Principal 1 explained the teacher was employed by Primary School 1 on 8 February 2003 on a contract until the end of the year, following the late resignation of a teacher after the commencement of the 2003 school year. She was a mature age beginning teacher, having finished her Bachelor of Education at University in 2002. For her first week of teaching at Primary School 1, the teacher worked alongside the teacher she was replacing.

Having started after the beginning of the school year, Principal 1 gave evidence that, while the content of the induction process undergone by the teacher was identical to that of other new and first year teachers, the process was slightly different and was somewhat shorter. The teacher received a copy of the school’s Induction Manual and Staff Handbook (copies of which were tabled) and she also received a full overview of the school.

The teacher also participated in the joint Employer/Victorian Institute of Teaching induction process for provisionally registered teachers. Teacher 3, the team leader of Level 4 (Years 5 & 6) was appointed as the teacher's mentor for both the school and VIT purposes.

The Panel heard that a couple of weeks into the school year, Principal 1 met with the teacher to discuss her progress and needs and ascertain whether the teacher needed any additional professional development/support (other than that already provided/ongoing). In addition, every Monday morning the team leaders of the school met and included in this meeting was a discussion of the needs of any of their team members.

Principal 1 explained to the Panel that whilst the Vice Principal (later confirmed in evidence by the Vice Principal herself, Vice Principal 1) went through all the matters in the Staff Induction and Staff Handbook to all staff at the beginning of the school year, she had done this on an individual basis for the teacher. The Panel's attention was drawn to items in the Induction booklet on:

Page 11, the school's policy on meetings/professional development and the number of hours required per staff member for the year (a total of 84 hours for a full time teacher like the teacher)

Page 23, point 9 which stated that: "the approval of the Principal must be sought for all activities. No teacher may remove a class from the school ground for any reason without the approval of the Principal"

Page 31, the Student Welfare and Discipline Policy (including the requirement for staff to participate in the Cooperative Classroom Management program)

Page 38 of the Timetable booklet showed an example of the school's excursion proposal form.

Similarly the Panel's attention was drawn to the staff handbook and in particular to sections 2.8 paragraph 9 and 3.4 regarding the professional responsibilities of teachers including the need for the principal's approval for all excursions.

In addition, Principal 1 gave evidence that all staff teaching at Primary School 1 were required to attend a 5 week student behaviour course. As this course had already commenced at Primary School 1 prior to the teacher's appointment, Principal 1 said that the teacher joined the course running at the time but that she, as Principal, also made arrangements for her to attend another full course at another local primary school later in the term.

In her evidence to the Panel, Principal 1 stated that she felt that she had an excellent relationship with the teacher and that the teacher would have asked her for any additional assistance that she had required.

In relation to the specifics of allegation 2 regarding the Year 6 party held at the house at which the teacher was staying at the time, Principal 1 gave evidence that the first time that she became aware of the party was at the confirmation lunch on the day following the party. The party only involved the Year 6 students in the teacher's grade and not the other Grade 6 students nor any of the other level 4 teachers. Principal 1 stated that she did not follow this up at all until the Monday (the following day) when she met with the teacher to discuss the party. At this meeting Principal 1 addressed the issue with the teacher who seemed surprised that it was inappropriate both that she had held the party and that she should have asked the principal for her permission first. The teacher replied that she had not meant anything ill. Her response at the time was that it would not happen again. When Principal 1 explained her concerns, especially those relating to the legal duty of care for her students to the teacher at this meeting, the teacher did appear to understand. It was, however, more a matter of good luck rather than good management that there were no untoward consequences from the party.

Whilst it later emerged that some Year 6 parents had been in attendance at the party, this did not change the situation that it was held without the Principal's knowledge or permission. Principal 1 also gave evidence that she was concerned that a professional teacher ought to know that holding a function such as this was in breach of the professional responsibilities of a teacher. When questioned, Principal 1 did not recall discussing the purpose of the party with the teacher.

At the end of 2003, the teacher's contract was not renewed at Primary School 1 but the school continued to employ the teacher as an emergency teacher. Under cross examination Principal 1 described the teacher at the end of 2003 as a bright, bubbly and loud person who was competent as a beginning teacher. Principal 1, did however, express reservations as to whether Primary School 1 was the best place for the teacher. The teacher was also offered the opportunity to continue to attend staff professional development activities at Primary School 1 which she did on one occasion only at the beginning of the 2004 school year.

Principal 1 then gave evidence regarding the fourth allegation in which it was alleged that the teacher herself swore and allowed swearing in the classroom on Thursday 24 July 2004 when the teacher had been replacing a classroom teacher. Principal 1 told the Panel that she had been informed that on the classroom teacher's return to her grade, the children had asked to have the teacher again as they had been allowed to swear and that she had sworn herself. Principal 1 gave evidence that she had confirmed this allegation by speaking to one of the children herself. Under cross examination, Principal 1 told the Panel that when speaking with the class herself in reference to the preceding day, three quarters of the students admitted that they swore and that they heard the teacher swear.

Principal 1 told the Panel that she, together with the Vice Principal, Vice Principal 1, then met with the teacher on the following day, Friday 30 July and put this allegation to her. Principal 1 gave evidence that this was not the first time that she had discussed matters which related to appropriate professional behaviour with the teacher. The teacher denied the allegation. Principal 1 told the teacher that the weight of evidence supported the allegation. Principal 1 then indicated to the teacher that it would be in her interest

not to continue teaching at Primary School 1 to which she responded, visibly shaken, that she would leave the school immediately. Principal 1 asked Vice Principal 1 to go with the teacher while she collected her belongings as she was considerably distressed.

Principal 1 told the Panel that this incident represented "the straw that broke the camel's back". The school had been continually dealing with a range of small issues which related to the teacher's inability to consistently meet the professional standards required of a teacher.

Principal 1 gave evidence that like many beginning teachers, the teacher had experienced difficulty walking that fine line between being a friend to her students and being a professional teacher. In fact, in describing the reports that the teacher's had written on the students she taught, the Principal 1 noted that they were very personal and written more as if the students were friends rather than students for whom she was responsible. The Panel noted that Principal 1, although conscious that the teacher was a mature age first year teacher, observed that she did not have a higher expectation of the teacher than of other first year teachers.

A copy of the teacher's Annual Review Principal's Feedback, which indicated no concerns, was provided to the Panel. At no stage during the hearing was the teacher's competence questioned. Principal 1 did, however, indicate that any concerns that she might have had concerning the use of inappropriate language would not appear in this document. Those concerns would have been addressed personally with the teacher.

### **Vice Principal 1, Primary School 1**

Vice Principal 1 told the Panel of the school's arrangements, called Transition, for the end of grade 6, which marked the girls' transition into secondary years. This involved a mass/liturgy followed by a luncheon (if appropriate). At the end of 2003 the lunch was not held but a video was shown and ice-cream and sweets served instead.

In relation to allegation 2, Vice Principal 1 told the Panel that the first that she knew of the party was the photos that she saw on the wall of the teacher's classroom following the event.

In July 2004 it was Vice Principal 1's responsibility to employ relieving teachers. The teacher was one of those relieving teachers employed. The teacher was employed by Vice Principal 1 on Monday 26 July 2004 and the following day the normal classroom teacher reported to Vice Principal 1 that her classroom had been left untidy, the door ajar (instead of being locked) and a chair left outside. Vice Principal 1 followed this up with the teacher on the Thursday of the same week (when she was next employed as a casual relief teacher). Whilst the teacher had not agreed that she had left the room untidy, this was not, according to Vice Principal 1, a major matter.

On the following day, Friday 30 July 2004, Vice Principal 1 told the Panel that Teacher 1, who had been replaced the day before by the teacher, came to see her and reported that the children in her grade had told her (Teacher 1) that they had had a good day



yesterday as they had been allowed to swear and their teacher, the teacher, had also sworn. This was then reported to the Principal.

Vice Principal 1 gave evidence that she had been present at the meeting when this was discussed by the Principal with the teacher on Friday 30 July and confirmed the account of the meeting given earlier by Principal 1. She also confirmed that whilst the Principal initially suggested that Primary School 1 might be the wrong school in which to work for the teacher, there was mutual agreement that the employment relationship should be terminated.

The Principal had then asked Vice Principal 1 to follow the teacher as she left the Principal's office to collect her belongings as she was distressed. Vice Principal 1 did not follow the teacher directly but went to the classroom by another route and saw the teacher, visibly upset, with a group of students around her.

Vice Principal 1 confirmed that no concerns regarding the teacher's competence were raised, although her classroom was noisy and that this disturbed other teachers at times. She had discussed this with the teacher. Vice Principal 1 also told the Panel that there were a number of occasions on which she spoke with the teacher regarding organisational matters. Vice Principal 1 indicated that the teacher had had a good rapport with the children in her grade in 2003, although this was more as equals/friends than the professional relationship expected of a teacher. Vice Principal 1 indicated that she would have expected the teacher to learn what was required of a professional relationship between teacher and student during her first year of teaching, but this did not occur in 2003.

### **Teacher 1, Primary School 1**

In relation to allegation four, Teacher 1 told the Panel that the teacher had replaced her in July 2004 whilst she was unwell. On her return the following day, Friday 30 July 2004, she found the classroom very untidy with dictionaries and paper everywhere, which she reported to the Vice Principal. In addition, three children asked her could they have the teacher as a teacher again as they told her that they had been allowed to use the 'f... word'. In an appropriate gap, when her children went to a specialist lesson, she reported this.

In her statement and her evidence to the Panel, Teacher 1 expressed her anger at the swearing as she had had problems with a couple of boys in her grade swearing and had just got them settled when this incident occurred.

Later that morning, whilst on yard duty at recess in the junior playground, Teacher 1 said that the teacher approached her and said 'I hate this fucking school and thank fucking Student 1 - he lost me my job'. This was said in the presence of children, a few of whom could have heard this. Teacher 1 then asked the teacher to calm down, but she said 'this school is fucked' and stormed off.

Under questioning, Teacher 1 told the Panel that she had heard the teacher swear previously but not in front of the children. She also suggested that the teacher may not

have been aware when she swore, although Teacher 1 believed that their team leader (Teacher 3) had taken this matter up with the teacher during 2003.

### **The teacher**

The teacher admitted to allegation two. She agreed that she held a party for the Year 6 children in her grade without either the Principal's or school's permission. She did not see the party as an excursion but more of a social event and as such she believed that she was not required to go through the standard excursion procedures. She indicated that she did not seek permission as she knew that the answer would be 'no' and she did not want to disappoint the students. Under cross-examination the teacher admitted to consciously making a decision to ignore school procedure for the organisation of events involving students. She now felt very sad because she had let people down and expressed remorse for her actions.

The teacher described the scene in the classroom when she was acting as a relief teacher in teacher 1's class on Thursday 29 July 2004. She admitted to saying, "Oh shit" whilst she was helping a student, student 1, on the computer and it crashed. The teacher went on to say that she was shocked at the allegations and that she did not give students permission to swear. She also stated that she did not have to reprimand the students for swearing on that day.

When she was asked if there was a possibility that the students could have been swearing and that she did not hear it, she replied "I can't differentiate between students speaking in a class". The teacher then told the Panel that she had undergone a hearing check early this year. The teacher told the Panel that she heard of the allegations made to the Institute in November 2004, and as a result she had her hearing checked. She informed the Panel that she had 80% hearing and found it difficult to focus on particular sounds if there was background noise. At no stage was the school informed of any hearing difficulties, as the teacher did not think it relevant to her teaching. According to the hearing test results that were later supplied to the Panel, the teacher has "adequate hearing for normal conversational situations and in elevated background noise".

In response to the suggestion that she is in the habit of spontaneous, subconscious swearing and that students could have taken this as a licence to swear, the teacher reiterated that she did not swear as a matter of course and that she did not swear in class. She conceded that in other social situations where students were not present she did swear. She questioned why, if her swearing was so profligate it had not been brought to her attention at an earlier date than 29 July 2004 and some assistance offered to her for dealing with the problem.

In her statement to the investigator the teacher had asked why she had not been given any constructive assistance to help her as a first year teacher. When questioned about this comment, the teacher did, however, admit that she had received other assistance as a first year teacher but not with regard to swearing. In fact the Panel heard evidence throughout the hearing of the exemplary support given by Primary School 1 to the teacher as a first year teacher.

## **DISCUSSION OF EVIDENCE**

Throughout the hearing the Panel heard that there was no dispute regarding allegation two, the party held for Year 6 girls. In fact the teacher herself not only admitted that she had organised the event and the details of the event itself, but that she had deliberately and wilfully chosen not to ask the Principal for her permission for the event as she knew that permission would not be granted.

Documents supplied to the Panel regarding teacher induction and staff handbooks also confirmed that the teacher was aware of the procedures for the organization of student related events. She stated that she did not see the event as an excursion but rather as a 'social gathering' and as such she was not required to go through the standard excursion procedures. The Panel notes that when the issue of the party was raised with the teacher by Principal 1 that she was remorseful for her actions once she realized the legal implications. She told the Panel "You don't do it. It's not the right thing".

Whilst the party may not have appeared to the teacher to be a formal school excursion and hence require completion of the paperwork normally required for an excursion, as outlined in the staff handbook, it is clear that she knew or ought to have known that a function such as this required the principal's permission. In her evidence later the teacher told the Panel that she had deliberately not sought Principal 1's permission for the party as she knew that it would not have been granted and she did not wish to disappoint the students.

The Panel is satisfied that the teacher, despite arriving after the commencement of the school year, received a comprehensive induction including the expectations for staff conduct set out in the Staff Handbook. Furthermore the Panel noted that by her own admission the teacher did not act in ignorance. Rather she conspired with her students to go ahead with the party without obtaining permission from Principal 1. In planning the party the teacher admitted, that she and the students under her supervision actively worked to keep all knowledge of the party from Principal 1.

Whilst a first year teacher, the actions of the teacher indicated that she had not grasped the professional responsibilities associated with the position of teacher. The Panel heard evidence that the teacher had not appeared to grasp the necessary distinction between being a friend to the students and taking the professional and legal responsibilities and obligations of a teacher. As a teacher, the teacher is required to act in the best interest of those students in her care. In hosting a party for students at the house at which she was staying, especially one with a swimming pool, the teacher was in breach of this duty and exposed her students to an unacceptable risk.

In regards to allegations four and five, swearing in the classroom and allowing students to swear, the Panel was presented with conflicting evidence. The statements by the students to Principal 1 and the evidence given by Teacher 1 suggest to the Panel that the teacher did use inappropriate language in front of students. When the teacher addressed the Panel regarding allegation 4 she denied using or promoting swearing in classes. She began a long discourse with the Panel regarding her hearing problems. The

teacher admitted that she may not have heard the children swear and did admit to swearing "on a few occasions". The Panel finds on the balance of probabilities that the teacher did use inappropriate language in front of students; however she did not actively promote its use by students in the classroom. The Panel also finds that the alleged hearing problems were not of any relevance to this allegation.

## **FINDINGS OF FACT**

After considering all the evidence the Panel made the following findings of fact:

In relation to allegation two, the teacher held a party for the Year 6 girls in her grade at the house at which she was then staying without the knowledge or permission of the school or its principal. Permission was deliberately not sought for the party as the teacher knew that it would not be granted.

In relation to allegation four, on Thursday 28 July 2004, both the teacher herself swore and she permitted the children in her class to swear. This was not an intentional act. Rather the teacher was not aware of either the swearing of the children in the grade she was teaching at the time or her own swearing.

In relation to allegation five, the Panel found that the teacher did in fact swear in front of a teacher and children in the playground on Friday 30 July 2004.

## **CONCLUSION**

Teachers need to be competent, responsible and of good character. The teacher's competence as a teacher is not in question. Teachers are also required to have a clear understanding of what is right and wrong and to ensure that they act as they duly ought. Teachers are expected to lead and develop young people by acting as role models for them. The teacher failed to fulfil the legal obligations of a teacher by ensuring the physical well being and safety of the students in her care.

When making its decision, the Panel understood that the primary purpose of disciplinary proceedings is to protect students, the teaching profession and the public by ensuring maintenance of proper standards of teacher conduct. Hence when considering the evidence surrounding allegation 2, the Panel considered the implications of holding an unauthorized student function. Given that the teacher had been involved in an extensive Induction program at the school, flaunting of the schools policies and procedures was a departure from the standards expected of a registered teacher. The Panel did not consider that being a graduate teacher lessens the severity of the teacher's deliberate and calculated actions. It is the view of the Panel that the teacher's actions placed the school and the Principal in a position that may have left both parties open to litigation, not to mention the risk in which she placed the students.

Whilst, when the event came to the notice of the school (after the event) the teacher was remorseful and realised that she has made a grave error of judgement, it was only

in her evidence to the hearing that she admitted that she deliberately held the event without the school's knowledge. The teacher's only explanation for the party was that she did not want to disappoint the children. Consequently it would appear that the teacher realised that she was acting in an inappropriate manner when she held the party, yet still chose to do so. The teacher at best would have appeared to confuse her desire to please the children in her grade with her professional responsibilities as a teacher. This is of significant concern to the Panel as it demonstrates that the teacher is still not aware of the legal and professional responsibilities associated with the role of a teacher. In the view of the Panel this incident amounted to serious misconduct. However, as it was a single incident and the teacher was at the time a first year teacher, the Panel does not believe that the appropriate penalty is to cancel her registration.

The Panel does not accept the suggestion put forward by counsel for the teacher that attitudes towards swearing have changed to the extent that schools should exercise a more liberal approach. In allowing but not encouraging the students in her class to swear and swearing in front of them herself, the teacher was acting in a manner that would be deemed inappropriate by the profession. Teachers are, by the very nature of their responsibilities, required to and expected by society, to act as role models for young people. In allowing swearing to occur and by not stopping it, the teacher failed in her professional duty to her students.

On balance, from the evidence heard by the Panel, it would appear that the teacher did both allow swearing to continue in the class she taught on Thursday 28 July 2004 and herself swear on both that day and the following day. Whilst these allegations were denied by the teacher the Panel also heard evidence that swearing was part of her regular vocabulary, even when inappropriate. There was, however, no evidence that such swearing was deliberate in the sense of setting out to swear both in front of students and staff. Rather it would appear that the teacher was not aware when she swore, nor was she aware whether the students in her grade were swearing. As role models, teachers are required both to demonstrate the expected behaviours and to admonish students when these expectations are not met. By her own swearing and her inaction in response to student swearing, the teacher was neither acting as a positive role model for her students nor was she fulfilling her professional obligations.

In addition, the teacher, as a replacement teacher, was setting classroom behaviour standards that were distinctly different from those of the regular classroom teacher and those of the staff in general. Other teachers must be able to trust their colleagues to act in a consistent manner to ensure that all staff set the same standards. Students too must be able to expect consistency from their teachers and in allowing swearing in the classroom the teacher did not continue the expectations of the regular classroom teacher. In fact Teacher 1, the teacher who was replaced by the teacher on 28 July 2004, told the Panel of her distress regarding the swearing as she had worked hard to stop some of her students from swearing and had just achieved her goal when this incident occurred.

It is noted that parents must be able to feel confident that a teacher will take care of their child and provide a positive role model. The Panel is of the view that the teacher fell short of both these requirements in respect of the party and the swearing.

The Panel recognises that the teacher is an inexperienced teacher, even though she had had considerable experience as a swimming teacher prior to her teacher training. Consequently while it would have been reasonably expected that the teacher would have learnt the professional requirements of a teacher, especially the boundaries required in the teacher student relationship, during both her training and her eighteen months of professional practice, she has yet to grasp these.

The Panel also wishes to note that the teacher has lacked honesty in her approach to the process of the Formal Hearing. It is the belief of the Panel that rather than face up to the difficulties she experienced as a new teacher, that she in fact used excuses which were not valid for her defence. The Panel would particularly like to highlight the teacher's references to her alleged hearing issues. Whilst the Panel does not profess to be experts in the area of hearing loss, the results presented to the Panel did not represent the severity of hearing loss that the teacher described in detail in the hearing.

Given that serious misconduct is not measured against the worst case scenario of misconduct, rather by the extent of the departure of proper standards, the Panel is in the view that in relation to the matters raised against the teacher and the evidence provided that some of her behaviour was incompatible with the duties and responsibilities of a teacher.

Noting that the teacher is not before the Panel to be punished, rather the Panel is tasked with hearing the matter in its role to protect the public and the profession, it is the considered view of the Panel that the teacher requires further assistance to understand the professional responsibilities and obligations of a teacher and that care must be taken to ensure this. Consequently the Panel has decided to impose conditions on any grant of provisional registration that would enable the Institute to be satisfied that the teacher is fit to teach before she is granted full registration.

According to section 43 of the Act the Institute may continue to conduct an inquiry into the conduct of a person who was a registered teacher at the time of that conduct. The teacher was a provisionally registered teacher at the time of the conduct the subject of this hearing. On 19 March 2005 the teacher's provisional registration lapsed. Provisional registration is granted by the Institute for a maximum of two years. The teacher applied for provisional registration again in January 2005. The Institute decided not to make a decision in relation to this application until the inquiry process was completed. The determination of the Panel has taken into account the fact that the teacher is not registered as a teacher in Victoria at the date of the decision.

## **FINDINGS PURSUANT TO SECTION 42(2)**

Taken together, allegations four and five do not demonstrate the conduct required of a teacher and constitute misconduct but not serious misconduct.

The teacher's actions in both organising a party for the grade 6 students in her class at the house of a friend and deliberately not seeking the permission of either the school or the principal (allegation two) is an act of serious misconduct.

**DETERMINATION PURSUANT TO SECTION 42(2)**

On 1 September 2005, the Panel determined that a recommendation be made to the Council of the Victorian Institute of Teaching that if the teacher is granted provisional registration, the following conditions should be placed on her registration:

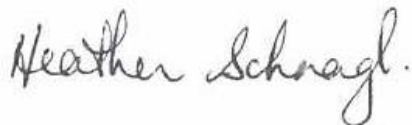
1. That the teacher undertake four terms of teaching practice from the date she is granted provisional registration at the end of which must satisfactorily complete the evidence based process to demonstrate that she has met the professional standards for full registration.
2. That the teacher obtain a report from her current employer at the end of her present contract (in 2005) which comments on the teacher's conduct and fitness to teach.



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**Heather SCHNAGL, CHAIRPERSON**



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**Cathie IRELAND, REGISTERED TEACHER**



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**Anne FARRELLY, REGISTERED TEACHER**