

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 0046

REGISTERED TEACHER: Karin Elizabeth WALTER

PANEL MEMBERS:

Marilyn Mooney	Chairperson
Jenny Wajsenberg	Registered Teacher
Terry Hayes	Registered Teacher

ATTENDANCE: The teacher was represented by Mr Edward JOHNSON, Industrial officer, Australian Education Union

Ms Anne SHEEHAN Counsel Assisting with Ms Clare SHERMAN instructing

DATE OF HEARING: 29 and 30 March 2007

DETERMINATION UNDER SECTION 42(2):

On 30 April 2007 the Panel determined that the teacher will remain registered as a teacher in Victoria.

The following conditions are imposed on the teacher's registration as a teacher:

1. That the teacher organise a registered secondary school teacher of at least 5 years experience to act as her professional mentor throughout the first year of her next teaching appointment. Such mentor may be either internal or external to the teacher's workplace.
2. The mentor will through peer support and collegial advice assist the teacher to reflect on her professional practice including classroom management strategies and engagement of students.
3. That within 12 months of her next teaching appointment, the teacher provides the Panel with a report from her mentor and a report from a school

Principal that attest to the teacher's satisfactory professional competence. These reports should focus on the teacher's:

- range of strategies of classroom management;
 - establishing of teacher presence in the classroom
 - understanding and responding to student learning styles
 - repertoire of lesson presentation strategies
4. That within the next 12 months the teacher undertakes 10 hours of professional development that focuses on Professional Knowledge, Professional Practice and Professional Engagement as set out in the Victorian Institute of Teaching's *Standards of Professional Practice for Full Registration*.
 5. That the teacher provides evidence of her attendance at 10 hours of professional development referred to in condition 4 above.
 6. That the teacher familiarise herself with the Victorian Institute of Teaching's Draft Code of Conduct, particularly Section 1 – Professional Conduct; and Section 3 – Professional Competence.
 7. That the teacher provide evidence of familiarising herself with the Victorian Institute of Teaching's Draft Code of Conduct as referred to in condition 6 above.

REASONS

BACKGROUND

The teacher has been a registered teacher since 31 December 2002.

On 19 January 2005, the Institute's Disciplinary Proceedings Committee decided that a formal hearing be held into the alleged serious incompetence and/or lack of fitness to teach of the teacher, following a notification from the employer on 10 June 2004.

On 9 May 2006, the Institute arranged for a consultant to interview the witnesses and take witness statements in preparation for the formal hearing. Following receipt of the consultant's investigation report, the Disciplinary Proceedings Committee determined that the inquiry proceed to formal hearing.

The formal hearing was listed for 11 and 12 December 2006 but it was adjourned until 5 and 6 March 2007. The Notice of Formal Hearing was sent by registered post to the teacher on 6 February 2007.

Nature of allegations:

The information the Institute has received as evidence of possible serious incompetence and/or lack of fitness to teach is:

That whilst a teacher at the school in 2002 and 2003, the teacher was seriously incompetent, displaying:

1. Failure to adequately supervise students and establish and maintain standards for student behaviour.
 - (a) During the teacher's language classes in 2002, students were allowed to use foul language, throw paper and chewing gum and scuffle.
 - (b) Students in 10H during 2003 threw balls of paper and stoppers off chairs in an uncontrolled classroom environment.
 - (c) Students in the teacher's language classes in 2003 did not engage with tasks, talking amongst themselves
 - (d) In 2002, colleagues noticed the teacher consistently displayed a lack of classroom control contributing to a poor working environment with excessive noise. Students often had their backs to her or were engaged in their own private conversations.
 - (e) In 2003, students in the teacher's classes often showed signs of boredom, displaying rowdy behaviour that went unchecked including the use of offensive language.
2. Failure to use materials and resources and structure activities for effective student learning.
 - (a) The teacher did not sufficiently prepare prior to lessons; there was little or no planning of an appropriate curriculum evident during her supervised classes

- and she was unable to provide lesson outlines to members of her support group.
- (b) During the teacher's 10H language class on 9 October 2003, students watched a film without any instructions regarding its educational use.
 - (c) The teacher did not ensure students in her Year 9 English class had read a book, the content of which formed part of the class' mid-year exam.
3. Failure to communicate effectively with students and their parents or guardians.
- (a) On 27 November 2003, parent 1 complained to Principal 1 about the teacher not responding to her letter.
 - (b) Students in the teacher's Year 9 English class in 2003 were confused and disgruntled due to a lack of clear instructions from the teacher regarding lesson and homework requirements.
 - (c) In 2003, the teacher was unable to answer students' requests for help, avoiding questions she could not answer.
 - (d) In 2003, the teacher's students were unsure about the requirements of homework tasks and were unable to receive sufficient instructions from the teacher about classroom tasks.
4. Failure to provide a safe and supportive learning environment.
- (a) On 17 May 2002, the teacher did not intervene to stop a fight between student 1 and student 2 during which student 3 was injured trying to stop it.
 - (b) During her language class in period 2 on 27 February 2003, the teacher did not intervene to prevent a fight between student 4 and student 5 that led to one boy requiring urgent dental treatment.

THE LAW

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

The term *fitness to teach* is not defined in the Act. The Panel is aware of case law regarding disciplinary proceedings in other jurisdictions which refers to the term *fit and proper* person. The Panel has had regard to those cases and other case law on disciplinary matters to decide what is meant by the term *fitness to teach*.

According to the High Court, 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 that profession.

Simple negligence or errors of judgement are not sufficient for serious incompetence. However negligence of a sufficiently high level could amount to incompetence. If a teacher's practice is such that it would defeat the cause of imparting knowledge to students then this would be serious incompetence.

The conduct need not be criminal, committed in bad faith or involve moral wrongdoing to be incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty of negligence or incompetence in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach, then the teacher would be seriously incompetent (see *Raylee Patricia Harley v Robert McDonald & Ors* [1999] NZCA 145).

In *Zechner v Department of School Education* [1999] FCA 445 a teacher was dismissed for incompetence. After hearing the evidence the Court found that the teacher was incompetent. In finding incompetence the Court noted that the teacher was:

- unable to implement meaningful lessons
- unable to communicate ideas or information
- unable to develop rapport and confidence with students
- not trusted by parents or other teachers to perform the duties of a teacher
- poor relationship with colleagues
- unable to maintain teacher/student relationship
- deficiencies in curriculum knowledge
- unable to see the need to improve teaching skills.

These skills were fundamental requirements for a teacher and a failure to exercise these skills indicated incompetence.

Whether incompetence 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 of the act or omission. 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* decision of VCAT 2 December 1998).

If the act or omission that constitutes the misconduct is within the will, power or control of the teacher it is more likely to be serious misconduct. If the act was done wilfully or recklessly without regard for the consequences, then it is more likely to be serious misconduct. However if the teacher's conduct was caused by their inability to cope with the work situation, this may be incompetence but may also be lack of appropriate support. If the conduct was caused by ill health then it will not be misconduct (see *Christine Trigger and: The Australian Telecommunications Commission* (1984) 4 FCR 242). However the teacher may be unfit to teach.

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).

DOCUMENTS CONSIDERED

The Panel was presented with the following documentary evidence:

1. Notice of Formal Hearing dated 6 February 2007
2. Witness statements
 - Witness statement of Principal 2 dated 17 May 2006 (1Page) **001** and attachments
 - BB1 – Report in relation to Unsatisfactory Performance, dated 1 December 2003, which includes attachments as itemised in the Report (150 Pages) **002 -151**
 - BB2 – letter to the employer from Principal 2 (1 Page) **152**
 - Witness statement of the Assistant Principal dated 19 May 2006 (3 Pages) **153 - 155** and attachments
 - PD1 – Record of Meeting, dated 13 March 2002 (2 Pages) **156 -157**
 - PD2 – Classroom Management Plan prepared for the teacher, dated 14 March 2002 (1 Page) **158**
 - PD3- Minutes of Support Group Meeting dated 28 February 2003 (3 Pages) **159 -161**
 - PD 4 – Minutes of Support Group Meeting dated 19 March 2003 (2 Pages) **162 -163**
 - PD5 – Minutes of Support Group Meeting dated 9 April 2003 (2 Pages) **164 -165**
 - PD6 – Minutes of Support Group Meeting dated 5 May 2003 (2 Pages) **166 -167**
 - PD7 – Memo, ‘Brief for the Support Team’ dated 12 September 2003 (2 Pages) **168 -169**
 - PD8 – Notes to Accompany Brief (2 Pages) **170-171**
 - PD9 – Minutes of Support Group Meeting dated 16 September 2003 (1 Page) **172**
 - PD10 – Minutes of Support Group Meeting dated 7 October 2003 (1 Page) **173**

- PD11 – Minutes of Support Group Meeting dated 21 October 2003 (2 Pages) **174 -175**
- PD12 – Minutes of Support Group Meeting dated 5 November 2003 (1 Page) **176**
- PD13 – Minutes of Support Group Meeting dated 11 November 2003 (2 Pages) **177-178**
- PD14 – Minutes of Support Group Meeting dated 18 November 2003 (2 Pages) **179 -180**
- PD15 – Assistant Principal handwritten notes, Observation of Classes, dated 9 October 2003 (3 Pages) **181-183**
- PD16 – Assistant Principal handwritten notes, Observation of Classes, dated 10 October 2003 (4 Pages) **184 -187**
- PD17 – Assistant Principal handwritten notes, Observation of Classes, dated 10 October 2003 (4 Pages) **188 -191**
- PD18 – Assistant Principal handwritten notes, Observation of Classes, dated 13 October 2003 (4 Pages) **192 -195**
- PD19 – Assistant Principal handwritten notes, Observation of Classes, dated 23 October 2003 (4 Pages) **196 -199**
- PD20 – Assistant Principal handwritten notes, Observation of Classes, dated 29 October 2003 (4 pages) **200 - 203**
- PD21 – Assistant Principal handwritten notes, Observation of Classes, dated 31 October 2003 (4 Pages) **204 -207**
- Witness statement of Principal 1 dated 19 May 2006 (2 Pages) **208 -209** and attachments
 - VW1 – letter of complaint from teacher 1 to Principal 1, dated 27 February 2002 (1 Page) **210**
 - VW2 – letter from parent 2 to teacher 1 dated 4 March 2002 (1 Page) **211**
 - VW3 – memo from Principal 1 to the teacher, dated 10 July 2003 (1 Page) **212**
 - VW4 – Record of Meeting, dated 13 March 2002 (2 Pages) **213 -214**
 - VW5 – Classroom Management Plan prepared for the teacher, dated 14 March 2002 (1 Page) **215**
 - VW6 – Report in relation to Unsatisfactory Performance, dated 1 December 2003, which includes attachments as itemised in the Report (180 Pages) **216 -395**
- Witness statement of teacher 2 dated 19 May 2006 (3 Pages) **396 -398** and attachments
 - MK1 – Memo, Brief for the Support Team, dated 12 September 2003, from Principal 2 & Principal 1 (2 Pages) **399 - 400**
 - MK2 – Notes to Accompany Brief (2 Pages) **401 - 402**
 - MK3 – Minutes of Support Group Meeting, dated 16 September 2003 (1 Page) **403**
 - MK4 – Minutes of Support Group Meeting, dated 7 October 2003 (1 Page) **404**

- MK5 – Minutes of Support Group Meeting, dated 21 October 2003 (2 Pages) **405 - 406**
- MK6 – Minutes of Support Group Meeting, dated 5 November 2003 (1 Page) **407**
- MK7 – Minutes of Support Group Meeting, dated 11 November 2003 (2 Pages) **408 - 409**
- MK8 – Minutes of Support Group Meeting, dated 18 November 2003 (2 Pages) **410 - 411**
- MK9 – teacher 2, handwritten notes, Observation of Classes, dated 9 October 2003 (4 Pages) **412 - 415**
- MK10 – teacher 2, handwritten notes, Observation of Classes, dated 14 October 2003 (4 Pages) **416 - 419**
- MK11 – teacher 2, handwritten notes, Observation of Classes, dated 22 October 2003 (4 Pages) **420 - 423**
- MK12 – teacher 2, handwritten notes, Observation of Classes, dated 6 November 2003 (4 Pages) **424 - 427**
- MK13 – teacher 2, handwritten notes, Observation of Classes, dated 12 November 2003 (4 Pages) **428 - 431**
- MK14 – teacher 2, handwritten notes, Observation of Classes, dated 31 October 2003 (4 Pages) **432 - 435**
- Witness statement of teacher 1 dated 19 May 2006 (2 Pages) **436 – 437** and attachments
 - NJ1 – Memo, Brief for the Support Team, dated 12 September 2003, from Principal 2 & Principal 1 (2 Pages) **438 - 439**
 - NJ2 – Notes to Accompany Brief (2 Pages) **440 - 441**
 - NJ3 – Minutes of Support Group Meeting, dated 16 September 2003 (1 page) **442**
 - NJ4 – Minutes of Support Group Meeting, dated 7 October 2003 (1 Page) **443**
 - NJ5 – Minutes of Support Group Meeting, dated 21 October 2003 (2 pages) **444 - 445**
 - NJ6 – Minutes of Support Group Meeting, dated 5 November 2003 (1 Page) **446**
 - NJ7 – Minutes of Support Group Meeting, dated 11 November 2003 (2 Pages) **447 - 448**
 - NJ8 – Minutes of Support Group Meeting, dated 18 November 2003 (2 Pages) **449 - 450**
 - NJ9 – teacher 1, handwritten notes, Observation of Classes, dated 8 October 2003 (4 Pages) **451 - 454**
 - NJ10 – teacher 1, handwritten notes, Observation of Classes, dated 10 October 2003 (4 Pages) **455 - 458**
 - NJ11 – teacher 1, handwritten notes, Observation of Classes, dated 14 October 2003 (4 Pages) **459 - 462**
 - NJ12 – teacher 1, handwritten notes, Observation of Classes, dated 15 October 2003 (4 Pages) **463 - 466**

- Witness statement of witness 1, dated 2 June 2006 (4 Pages) **467 – 470** and attachments
 - DJ1 – Memo, Brief for the Support Team, dated 12 September 2003, from Principal 2 & Principal 1 (2 Pages) **471 - 472**
 - DJ2 – Notes to Accompany Brief (2 Pages) **473 - 474**
 - DJ3 – Minutes of Support Group Meeting, dated 16 September 2003 (1 Page) **475**
 - DJ4 – Minutes of Support Group Meeting, dated 7 October 2003 (1 Page) **476**
 - DJ5 – Minutes of Support Group Meeting, dated 21 October 2003 (2 Pages) **477 - 478**
 - DJ6 – Minutes of Support Group Meeting, dated 5 November 2003 (1 Page) **479**
 - DJ7 – Minutes of Support Group Meeting, dated 11 November 2003 (2 Pages) **480 - 481**
 - DJ10 – witness 1, handwritten notes, Observation of Classes, dated 16 October and 22 October 2003 (4 Pages) **482 - 485**

- Witness statement of the teacher dated 31 May 2006 (3 Pages) **486 – 488** and attachments
 - KW1 – Letter to the teacher from Principal 2, dated 7 June 2002 (2 Pages) **489 - 490**
 - KW2 – Letter from the teacher to Principal 2, dated 11 June 2002 (3 Pages) **491 - 493**
 - KW3 – Letter to the teacher from Principal 2, dated 17 October 2002 (2 Pages) **494 - 495**
 - KW4 – Letter from the teacher to Principal 2, dated 21 October 2002 (4 Pages) **496 - 499**
 - KW5 – Letter to the teacher from Principal 2, dated 12 September 2003 (2 Pages) **500 - 501**
 - KW6 – Letter to the teacher from the employer, dated 6 February 2004 (12 Pages) **502 - 513**
 - KW7 – Letter to the teacher from the employer, dated 12 February 2004 (1 Page) **514**
 - KW8 – Letter from the teacher to the employer, dated 15 February 2004 (7 Pages) **515 - 521**
 - KW9 – Letter to the teacher from the employer, dated 14 April 2004 (6 Pages) **522 - 527**
 - KW12 – Letter from the teacher to the employer, dated 20 April 2004 (2 Pages) **528 - 529**
 - KW13 – Letter to the teacher from the employer, dated 11 May 2004 (2 Pages) **530 – 531**

3. Letter from the teacher to the employer, dated 15 December 2003.

The Panel was presented with the following documentary evidence:

- A. Guidelines for Managing Complaints, Unsatisfactory Performance and Serious Misconduct in Relation to Teachers.
- B. Victorian Government Schools – Teacher Class Handbook
- C. Statement of Principal 1
- D. Statement of witness 1
- E. Statement of Assistant Principal
- F. Statement of teacher 1
- G. Statement of teacher 2
- H. Statement of teacher 3
- I. Statement of teacher 4
- J. Statement of teacher 5
- K. Statement of teacher 6

THE EVIDENCE

The Panel heard evidence under oath or affirmation from:

Principal 1
Assistant Principal
Teacher 1
Teacher 2
Witness 1
The teacher
Teacher 3
Teacher 4
Teacher 5
Teacher 6
Teacher 7

Allegation 1: Failure to adequately supervise students and establish and maintain standards for student behaviour

The Panel was presented with written and verbal evidence from Principal 1 of the 'severely unruly nature' of the teacher's classroom which had been directly observed by Principal 1 and had also been reported to her by other staff. Principal 1 testified that she had concerns about the teacher's capacity to manage students as early as 2002 when Principal 1 changed the teacher's teaching allotment from a full LOTE load to English and LOTE in order to provide a more favourable setting for the teacher to carry out her teaching duties. Principal 1 gave evidence that early in Term 1 2002 she received letters of complaint from a member of staff and a parent in relation to issues with the teacher's classroom management. Throughout 2002 it became apparent to Principal 1 that the teacher's classroom management did not improve and a formal process was initiated in June 2002. The process - which included three support panels of experienced staff who observed the teacher's classes and met with her to discuss progress, offer strategies for improvement and suggestions for classroom management - concluded in

November 2003 with Principal 1's recommendation that the teacher's employment with the employer be terminated. Principal 1 testified that throughout this period there was no discernible improvement in the teacher's capacity to manage student behaviour.

Written and verbal evidence from the Assistant Principal who observed the teacher's classes between 2001-2003 and that of experienced teachers, witness 1, teacher 1 and teacher 2, who, together with the Assistant Principal, were the observing members of the third support group established in September 2003, support the testimony of Principal 1. Minutes of a meeting of the second support group in April 2003 note that there were a number of classroom management issues as follows:

- The teacher identified a number of students in her classroom with whom she was experiencing difficulties
- Concern was expressed about the number of students seeking to go to the toilet during class
- The support panel noted that students misrepresented facts to the teacher who took them at their word and that on an occasion when students had behaved inappropriately they had written letters of apology but there should have been further follow through from her.

The Panel heard evidence that a second parent sent a letter of complaint about unruly classroom behaviour in June 2003, where it was alleged that students swore in class, did work unrelated to their English curriculum, moved furniture around the class and that the teacher on occasion took twenty minutes to settle the class down to work at the commencement of lessons.

Written evidence of classroom observations from the support panel members throughout the third support group period in 2003 contained several examples of out of hand classroom situations, with students either not working, or talking and engaging in other activities in a very noisy classroom environment. The written evidence referred specifically to classroom behaviour in Years 9F, 9I and Year 10H language and Years 9G and 9J English with a consistent theme of the teacher's inability to control her classes. Whilst there was a body of evidence supporting the teacher's lack of classroom control, poor student behaviour and lack of student engagement in tasks, the Panel heard almost no evidence that the teacher's classes often showed signs of boredom.

The Panel also heard evidence from a number of teacher witnesses (teacher 3, teacher 4, teacher 5, teacher 6, teacher 7) who testified that the teacher's classes, whilst rowdy and poorly behaved, were not atypical of classes at the school. Teacher 3, a teacher at the school for three years, gave evidence that he used a mobile phone, both while on yard duty to call for assistance in the event of a fight and to seek management assistance for classroom behaviour. He also stated that fights were common and that there were a number of gangs at the school. He testified that objects were often thrown across the quadrangle and that confrontational behaviour was common both within and outside the classroom. As a teacher he found the school a difficult place in which to work. He described a fire drill in the quadrangle where a student threw a lump of clay which hit a teacher on the head. Teacher 3 gave evidence that he had observed the teacher's classroom practice on a number of occasions and in his view,

she did not experience any greater difficulty in student supervision and classroom management than many other teachers at the school including experienced staff such as himself.

Teacher 4 gave evidence that she had been sworn at by students and that the incidence of student swearing at the school was significantly greater than in other schools in which she had worked. She testified that aggressive and resistant student behaviour interfered with delivery of curriculum and that students frequently confronted teachers, refusing to follow reasonable instruction.

Teacher 7, a contract teacher in 2003, gave evidence that students at the school were abusive, uncivil towards staff, used foul language and on occasions jumped out of windows. She described the environment as tough and a difficult teaching context. Despite pleas from Principal 1 she declined to renew her contract.

Teacher 6, who still teaches at the school, observed the teacher in class and gave evidence that in his view, her classroom management standards did not differ from those of several other teachers at the school. He observed that she encountered difficulty with student management at times, and, in particular, with the expectations of staff with the introduction of the tighter discipline approach introduced by Principal 1 in 2002. Teacher 6 testified that it was not uncommon for students at the school to throw objects in class. The Panel heard evidence from teacher 6 that the teacher persevered in her attempts to gain control of her classroom.

In her testimony, the teacher testified that student behaviour at the school was generally unruly and that she considered herself a beginning teacher who was not well-equipped to deal with the specific environment at the school, either through the implementation of an induction program for beginning teachers, or by the provision of adequate professional development opportunities, apart from a professional development on student management strategies. She considered the kind of counselling offered by Principal 1 inappropriate for the difficulties she was facing. In particular she did not consider the support groups, especially the third group, established by Principal 1 as processes designed to help her improve her teaching. Instead, she implied, they were established to pass judgment on her. She described the third support group as a process designed to 'manage her out of the system', and this was reflected in the ad hoc ways the procedures were followed and feedback provided. She alleged that her classroom management improved over her three years at the school, but conceded that this was an aspect of her teaching which had scope for further improvement.

Allegation 2: Failure to use materials and resources and structure activities for effective learning

Principal 1's evidence, in providing an overview of the teacher's history at the school from her appointment in 2001 through to the end of 2003, emphasised the administration's growing concern with her capacity to teach effectively because of her inability to maintain discipline in accordance with the whole school management policy and strategies. In relation to Allegation 2, Principal 1 highlighted the teacher's

rudimentary knowledge of curriculum and pedagogy appropriate the school students, such as not being able to assist students to write an essay in the third person and showing a film three times to a Year 10 class who were then expected to write a review of it.

The Assistant Principal and teachers involved in the third support group presented a consistent picture of the teacher's classrooms as places where disruptive behaviour made effective learning difficult and intermittent. To varying degrees they described a classroom in which teaching strategies to engage the students were difficult to deduce in the general melee of the classes. The observation sheets produced by the Assistant Principal and teacher 2 in particular demonstrate this mixture. They attest to elements of lesson planning and curriculum delivery too often overwhelmed by the teacher's inability to maintain appropriate levels of classroom discipline. The support teachers also affirmed that the teacher made their observation task difficult because of her failure to provide formal lesson plans or the lack of appropriate detail in the ones which she did supply as required by the procedures of the support group.

The teacher, in responses to the complaints of the employer and Principal 2, offered considered defences and justifications of her professional behaviour with this proviso: 'It is difficult to maintain an appropriate level of student discipline without adequate support and this may impact on curriculum delivery.' She defended her professional knowledge of curriculum in relation to the language and to a lesser extent, English and her teaching methodology as one based on a strong reliance on oral work, discussion and the teaching of individual students, which may have contributed to the impression of noisy out of control classes to teachers more focused on structured whole class teaching.

Teacher 5 stated that she found the teacher not only a well prepared LOTE coordinator in her first year of teaching (2001) but also one who developed resources that she shared with other teachers such as herself, a non-LOTE teacher required to teach language. Teacher 4 also described her Home Group as well organised and well behaved in a language class of the teacher in which the students were engaged in creating a fashion show in a foreign language. Teacher 4, who had experienced difficulties with this class, attested: 'I marvelled at how well the group was working.'

Allegation 2(b) relates to a lesson (9/10/03) observed by the Assistant Principal of a Year 10 language class in which the teacher screened a film. The Assistant Principal observed that 'No direction given at all regarding the film except to say that it combines history and humour together.' However in the subsequent lesson (10/10/03) the Assistant Principal reported more positively: 'Wrote name of film on board and date in the foreign language being studied. Written out 5 questions relating to film – very relevant but a little superficial. Appropriate film combining humour and history – students laughed and enjoyed it.'

The substance of parent 3's letter which forms the basis of Allegation 2(c) is that the text in question 'was to be read as a class at school and 50% of the Year 9 mid-year exam was related to the book. Unfortunately my son's 9J class was not given the opportunity to read and discuss and therefore be prepared to sit the English exam with confidence.

When my son approached his teacher two weeks before the exam asking when they would be reading the book, he was told it would be revised soon. Of course it was not revised.’ Regarding this complaint, in her responses to the employer and Principal 2, the teacher countered with an argument that the text was taught in an appropriate manner: the class, many of whom were bored by the text, began reading the text in class, using a strategy in which students were allotted responsibility for reading and reporting on a particular chapter to the class. Following that the class was required to finish reading the text for homework. The teacher also attested that the change in the exam timetable compressed the time allowed for revision, producing anxiety in both the staff and students. Despite these constraints, she claimed many of her students passed the exam.

Allegation 3: Failure to communicate effectively with students and their parents or guardians

The letter supporting Allegation 3(a) was written by parent 1, mother of student 4, 9J, in response to her query regarding the teacher’s letter regarding student 4’s submission of two English assignments. Student 4 disputed the teacher’s complaint. Parent 1 wrote to the teacher regarding the situation but received no reply in return. The teacher argued that it ‘was an accident that I did not contact the parent as I misplaced the letter and forgot about it. I would have liked to discuss her son’s assignment.’

Allegations 3(b), (c) and (d) are interrelated. They refer in general terms to the quality of the teacher’s ability to communicate effectively with students by providing clear instructions in class and assignments and homework tasks, and by following up requests for help with work. The teacher aide’s report stated: ‘(the teacher) is not giving clear instructions and the students don’t know what to do... She is always giving students exercises from the book, without any explanation’. The parents of student 6 in their letter stated that, ‘from speaking to student 6’, the teacher ‘appears to be stressed and giving the wrong information when asked questions in class’. The employer referred specifically to an inability to set goals at the beginning of lessons which led to confusion amongst students, and the provision of instructions and criteria sheets for assignments which were too slight to be of use to students, citing in particular the magazine assignment cited in Allegation 2(a). The employer’s complaints were corroborated by the observations sheets of members of the third support group which made the point that the teacher’s failure to establish clear instructions for the whole class at the beginning of the lesson undermined her capacity to establish parameters for behaviour while she was working with individual students. The teacher defended the quality of her assignment instructions and criteria sheets and asserted that she had developed them after taking advice to improve them from members of the support group and other teachers. She provided a context and justification for the seemingly slight magazine assignment. ‘For the magazine assignment I put the criteria on the board. Many students failed to copy them down despite my clear instructions. I used the same criteria typed on a sheet and attached it to finished work for marking. I used a finished magazine assignment as an example to show my students. It was from a member of staff at our school whose child is a student at a private school. The teacher provided a similar detailed rationale for a range of the samples cited by the employer.

The observation sheets of the Assistant Principal and teacher 2 detailed a mixture of moments where instructions to, and support for, individual students were apparent but too often, because the whole class did not have clear expectations of what to do, the atmosphere was not conducive to sustained effective learning.

Allegation 4: Failure to provide a safe and supportive learning environment

The Panel was presented with written evidence in relation to two alleged instances of fights in the teacher's classroom. The first incident occurred in May 2005 in a Year 9 class. The Panel heard evidence from the teacher that she 'yelled' at a student who violently attacked another student in class in an attempt to stop his behaviour, but was ignored. She further gave evidence that another student in the class physically attempted to intervene and was pushed back and hurt in the melee. The Panel was presented with three written contemporaneous reports of the incident: the first from the teacher, the second from the student who had intervened who stated that she tried to stop the fight, hit her head on the table and her next memory was of being comforted by two other teachers, one of whom was the Assistant Principal. The third incident report was apparently from a teacher in the neighbouring classroom who was called in for assistance. Her report included a description of the hurt student and a comment that the teacher was trying to calm the offending students to restore order and was also instructing the rest of the class not to crowd around the injured girl.

Evidence was presented in relation to a second fight in a language class in February 2003 where it was alleged that the teacher took no action to prevent the altercation. In the incident report presented to the Panel, the teacher noted that the fight took place so quickly she 'was unable to prevent it'. She submitted that she did not hear the initial comment which provoked the physical response as she was at that time at the back of the class working with students. The teacher further gave evidence that as soon as she became aware of the altercation she moved to the front of the classroom but was unable to stop the fight. The Panel did not hear additional specific evidence in relation to this incident but it notes that the evidence from both Principal 1 and the Assistant Principal referred to this incident as an example of the teacher's inability to control student behaviour. No further direct evidence relating to this incident was presented to the Panel.

DISCUSSION OF THE EVIDENCE:

Allegation 1

The Panel considered the evidence of all the witnesses. It noted that there was a clear dichotomy in the evidence presented of (a) the school environment and (b) the teacher's performance. The school leadership and the support group involved in the monitoring process attributed the poor behaviour of the teacher's students to her inability to manage students. The other teacher witnesses, including the teacher herself, did not dispute the description of student behaviour but testified that this was neither unique to the teacher's classes, nor was it attributable primarily to her serious incompetency. The Panel acknowledges that the context in which the teacher was

working was extremely challenging, exacerbated by significant changes in school policy and emphasis in relation to student management and that the teacher's performance should be viewed in consideration of this context. When the teacher was appointed to the school the approach to student management was very much welfare oriented. With the change of school leadership in 2002, a new student management policy was introduced. This was a 'whole school approach' with an increased emphasis on discipline including what Principal 1 described as a 'zero tolerance of violence'. The Panel considers that these descriptions of the school environment support the evidence given by the teacher and other teachers that it was common for students to be uncivil towards teachers, use foul language and demonstrate disruptive behaviour including but not limited to throwing things in class and behaving in a confrontational manner. The Panel believes that teaching a compulsory LOTE to Years 9 and 10 in this environment presents specific challenges to teachers, especially beginning teachers who would require extensive mentoring and guidance to establish effective strategies for classroom management and control of student behaviour in such circumstances. The Panel commends the school on amending the teacher's allocation so that she did not have a complete LOTE allotment and considers that the school took this action to support her development and skills.

The Panel concludes that, on the evidence presented, the allegation that the teacher failed to adequately supervise students and establish and maintain standards for student behaviour is proved. The teacher's performance in classroom management was, in the Panel's view, demonstrated to be seriously incompetent according to proper professional standards expected in the community. Student learning is impeded in a chaotic classroom and the Panel is satisfied that whilst there was observable improvement in her classroom management between 2002-2003, it was not sufficient to enable sustained effective student learning. The Panel considers that as the teacher was a beginning teacher the school could have provided a more substantial induction program with follow up mentoring and that such a program may have been sufficient for her to develop strategies such that she would have attained a professional standard of student management. However on the evidence presented, the Panel is satisfied that the teacher's classroom management was seriously incompetent.

Allegation 2

The Panel accepts that the teacher did endeavour to deliver a curriculum and achieved intermittent success. The contrasting evidence of the two Year 10 language classes on the film observed by the Assistant Principal attest to this: a disaster one day; reasonable the next. However, that success was always hampered by the teacher's inability to maintain consistently effective classroom discipline. Even a discerning Year 7 student could see that distinction. As one parent wrote, 'my son believes the teacher to be a very capable teacher but appears to have little control over the children' (letter from parent 2, 4/3/02). Both the Assistant Principal and teacher 2, in their observation reports, gave the teacher credit for her attempts to make clear her instructions but these instructions were too often swamped in the surrounding melee of disruptive behaviour. The Panel also accepts that the teacher's teaching methodology, which placed a strong emphasis on oral work and working individually with students, is an acknowledged one. The problem, however, is these strategies require a good deal of teaching

experience and confidence, and are premised on the ability to establish a whole class teaching structure to ensure that all students are working effectively.

The Panel believes that the specific allegations contained in (b) and (c) do not of themselves indicate examples of serious incompetence or professional negligence. The decontextualised showing of the film alluded to in allegation (b) was followed by a class in which strategies for analysing it were evident. A more experienced teacher would have been alert to providing pre-viewing strategies. In relation to allegation (c) it is not an essential requirement of English teaching that a text be read totally in class or revised for an exam. Equally, it is naïve to expect that students do not require guidance in their first exam preparation in order to ease anxiety, especially since, in this case, the changed exam timetable was obviously creating stress and anxiety for conscientious students.

In making its judgment on Allegation 2 the Panel put more weight on what the observing teachers noted in their classroom observations rather than on the fact that the teacher did not observe the strict letter of the procedures required by the support group. Her own defensiveness about its purposes was very evident, and may indeed have contributed to what some support group members interpreted as a 'state of denial' about the seriousness of her situation. The Panel was also mindful of the fact that experienced and competent teachers such as teacher 3, teacher 6, teacher 4, teacher 5 and teacher 7, even with the best of preparation and teaching strategies, found curriculum delivery difficult in many of their classes at the school. Teacher 6 emphasised the problem of teaching theory to students in technology classes. The Panel accepts that the same applied to a much less experienced teacher attempting to teach a compulsory LOTE subject.

Allegation 3

Allegation 3(a) was not disputed by the teacher but, given that she taught a large number of students across a variety of year levels, the Panel accepts it as an exception to the rule, an oversight rather than an example of the teacher's common practice when communicating with parents.

The degree to which samples of written instructions for assignments and criteria sheets for class and homework tasks, cited in Allegations (b), (c) and (d), can in themselves support a charge of serious incompetence is questionable. The teacher's explanations of the ways in which she provided a context for them for instructing the students were plausible. Whether they proved effective, given the poor discipline of her classroom environment, is another matter. Similarly, the Panel is sympathetic to the teacher's explanation of using peer teaching in her language classes, and does not see this as a sign of her curriculum ignorance. The Panel considered the observations of the Assistant Principal and teacher 2 in the same light as they did when citing them as evidence for Allegation 2. That is, the teacher's intentions to communicate effectively in the classroom were often overwhelmed by a failure to establish effective classroom discipline.

Allegation 4

Evidence before the Panel in relation to the two incidents was varied. Whilst the teacher was unsuccessful in preventing the two fights, both her evidence and the student witnesses claim that the teacher did make an attempt to stop each of the fights as soon as she became aware of what was happening. Teachers have a duty of care to ensure that the classroom is a safe and supportive environment. It is not clear from the evidence whether the teacher became aware of the fight at an appropriate time, or whether she failed to note the signals of the impending fight at a point at which she could safely and effectively intervene and prevent the subsequent events.

FINDINGS UNDER SECTION 42(2)

In determining matters of serious incompetence the Panel is conscious of the importance of its decision in both protecting the public good and the integrity of the profession. In determining its findings the Panel was mindful of the decisions of serious incompetence in the cases of *Glynn Brown (VIT No: 109, 28 April)* and *Stephen Snow (VIT No 34: 16 May 2006)*. The serious incompetence in the former involved a beginning teacher demonstrating gross negligence in failing to provide a physically safe environment and to prepare students for VCE study. The serious incompetence in the latter case involved a teacher of 20 years' experience who was regularly late to classes, persistently failed to adequately supervise students, physically man-handled students, and had caused a number of parents to withdraw their children from the school.

In regards to the specifics of the teacher's case the Panel considered the following:

- The status of the teacher as a beginning teacher experiencing student management and classroom discipline problems in a school in a transition phase of implementing a significant change from a student welfare focus to a whole school discipline policy.
- The fact that the teacher was teaching a LOTE subject that was compulsory to Year 10. Included in that consideration was the fact that LOTE language was 'streamed' at 9 and 10, and the teacher taught the less academically oriented streams.
- The degree of the teacher's ability to recognise her own professional responsibilities vis a vis the school's responsibility to provide her with assistance and support through its discipline and student management processes. The teacher recognised that 'my control, although adequate was not good' and that she was willing to undertake professional development to improve that.
- The conflicting interpretations of the role and responsibility of the third support group established in September 2003. The teacher saw it as a process designed to judge her rather than to assist her to improve her teaching, and her level of cooperation with it seemed coloured by this perception. Members of the support group who observed the teacher's classes argued she should have been

more professionally responsible and proactive in determining that the support group operated effectively by providing lesson plans and seeking feedback from them.

- The degree to which experienced and competent teachers experienced similar difficulties to the teacher in maintaining classroom discipline in order to teach effectively and to deliver the curriculum.
- The degree to which the circumstances cited in Allegation 1 exacerbated the teacher's ability to enable effective student learning, and maintain effective communication with students and parents.

The Panel finds Allegation 1 proved and deems it to be proof of serious incompetence.

The Panel finds that the circumstances described in Allegation 1 were contributing factors to Allegations 2 and 3. However, on the balance of probabilities, Allegations 2 and 3 are not proved.

Regarding Allegation 4, the Panel considers that the teacher's failure to prevent the fights is to be distinguished from an allegation that she did not intervene. The Panel concludes on the balance of probabilities, based on the evidence presented, that Allegation 4 is not proved.

DETERMINATION UNDER SECTION 42(2):

On 30 April 2007 the Panel determined that the teacher will remain registered as a teacher in Victoria.

The following conditions are imposed on the teacher's registration as a teacher:

1. That the teacher organise a registered secondary school teacher of at least 5 years experience to act as her professional mentor throughout the first year of her next teaching appointment. Such mentor may be either internal or external to the teacher's workplace.
2. The mentor will through peer support and collegial advice assist the teacher to reflect on her professional practice including classroom management strategies and engagement of students.
3. That within 12 months of her next teaching appointment, the teacher provides the Panel with a report from her mentor and a report from a school Principal that attest to the teacher's satisfactory professional competence. These reports should focus on the teacher's:
 - range of strategies of classroom management;
 - establishing of teacher presence in the classroom
 - understanding and responding to student learning styles
 - repertoire of lesson presentation strategies

4. That within the next 12 months the teacher undertakes 10 hours of professional development that focuses on Professional Knowledge, Professional Practice and Professional Engagement as set out in the Victorian Institute of Teaching's *Standards of Professional Practice for Full Registration*.
5. That the teacher provides evidence of her attendance at 10 hours of professional development referred to in condition 4 above.
6. That the teacher familiarise herself with the Victorian Institute of Teaching's Draft Code of Conduct, particularly Section 1 – Professional Conduct; and Section 3 – Professional Competence.
7. That the teacher provide evidence of familiarising herself with the Victorian Institute of Teaching's Draft Code of Conduct as referred to in condition 6 above.



Marilyn Mooney, CHAIRPERSON



**per:
Jenny Wajsenberg, REGISTERED TEACHER**



**per:
Terry Hayes, REGISTERED TEACHER**