

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 077

REGISTERED TEACHER: Alfred Angelo HICKEY

PANEL MEMBERS: Terry Hayes, Chairperson
Anne Farrelly, Registered Teacher
Norm Fary, Registered Teacher

ATTENDANCE: The teacher attended the Formal Hearing and was self-represented
Mr Eugene White Counsel Assisting with Ms A Haslam instructing

DATE OF HEARING: 23 & 24 October and 17 & 18 November 2008

DETERMINATION UNDER SECTION 2.6.46(2) OF THE *EDUCATION AND TRAINING REFORM ACT 2006*:

On 16 February 2009 the Panel decided to cancel the registration of the teacher from the date of the decision.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching since 27 July 2005.

By letter dated 13 July 2007, the employer notified the Institute that they had taken action in relation to the alleged serious misconduct, serious incompetence and/or lack of fitness to teach of the teacher. The teacher's fixed term contract with the employer ceased on 30 June 2007 and an employment restriction was placed on the teacher that he not be permitted to undertake employment in the employer's schools in any capacity.

On 30 January 2008, the matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute and the Committee decided to refer the matter for investigation.

The Institute arranged for an investigation of the allegations and on 14 May 2008, the Committee considered the investigation report and determined to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 16 September 2008 was served upon the teacher's solicitor by Registered Post on 17 September 2008.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. Letter the employer to the Institute dated 18 July 2007 (2 pages) **001 – 002**
2. The teacher - Registration Details (4 pages) **003 - 006**
3. Notice of Investigation letter the Institute to the teacher dated 14 February 2008 (2 pages) **007 - 008**
4. Witness statement of the principal dated 27 February 2008 (4 pages) **009 - 012**
 - Attachment 1 – Minutes of Meeting (handwritten) dated 29 May 2007 (3 pages) **013 – 015**
 - Attachment 2 – Letter the principal to the teacher (unsigned) dated 30 May 2007 (1 page) **016**
 - Attachment 3 – Minutes of Meeting dated 30 May 2007 (2 pages) **017 – 018**
 - Attachment 4 – Minutes of Meeting dated 28 June 2007 (4 pages) **019 – 022**
 - Attachment 5 – removed
 - Attachment 6 – removed
5. Witness statement of assistant principal 1 dated 5 March 2008 (3 pages) **025 - 027**

- Attachment 1 – Minutes of Meeting (handwritten) dated 29 May 2007 (2 pages) **028 – 029**
 - Attachment 2 – Minutes of Meeting dated 30 May 2007 (2 pages) **030 - 031**
 - Attachment 3 – Letter the principal to the teacher (unsigned) dated 30 May 2007 (1 page) **032**
 - Attachment 4 – Minutes of Meeting dated 28 June 2007 (4 pages) **033 - 036**
- 6.** Witness statement of assistant principal 2 dated 10 March 2008 (2 pages) **037 - 038**
- Attachment 1 – Minutes of Meeting dated 23 May 2007 (3 pages) **039 – 041**
 - Attachment 2 – Statement from student 1 dated 11 May 2007 (1 page) **042**
 - Attachment 2(a) – Chronology (handwritten) (1 page) **043**
 - Attachment 3 – File note (handwritten), dated 28 May 2007 (2 pages) **044 - 045**
 - Attachment 4 – File note (handwritten) dated 28 May 2007 (1 page) **046**
- 7.** Witness statement of assistant principal 3 dated 15 April 2008 (3 pages) **047 - 049**
- Attachment 1 – Minutes of Meeting dated 23 May 2007 (3 pages) **050 - 052**
 - Attachment 2 – Statement from student 1 dated 11 May 2007 (1 page) **053**
 - Attachment 3 – File note (handwritten) dated 23 May 2007 (1 page) **054**
 - Attachment 4 – Diary Entry dated 21 June 2007 (1 page) **055**
 - Attachment 5 – Diary Entry dated 28 June 2007 (1 page) **056**
 - Attachment 6 – Diary Entry dated 18 July 2007 (1 page) **057**
- 8.** Witness statement of teacher 1 dated 26 February 2008 (3 pages) **058 - 060**
- Attachment 1 – Map (1 page) **061**
- 9.** Witness statement of teacher 2 dated 3 March 2008 (2 pages) **062- 063**
- Attachment 1 – File note (typed) dated 28 May 2007 (1 page) **064**
- 10.** Recorded Interview with the teacher (36 pages) **065 - 100**
- Attachment 1 – Document entitled ‘Unit – Planner and Self Evaluation’ (1 page) **101**
 - Attachment 2 – Student attendance record (1 page) **102**
 - Attachment 3 – Student attendance record (1 page) **103**
 - Attachment 4 – Student reports (9 pages) **104 - 112**
 - Attachment 5 – Document entitled ‘VIT Portfolio’ (29 pages) **113 - 141**
 - Attachment H6 – Student project work (10 pages) **142 - 151**
- 11.** Notice of Formal Hearing dated 16 September 2008.

The following exhibits were tendered at the formal hearing:

- A.** Statement of the principal dated 27/2/08 & attachments

- B.** Attachment 1 – ‘U-Unit - Planner and Self Evaluation’, Year 10 Woodwork – Term 2, 2007 (pg 101 of Hearing Book)
- C.** Submission on behalf of the teacher by the Community Legal Centre, dated 22/10/08
- D.** Statement of assistant principal 3 dated 15/4/08 & attachments
- E.** Email from teacher 3 to assistant principal 3, undated
- F.** The School Bulletin dated 16/10/2008
- G.** Email from the teacher to assistant principal 3 dated 14/6/08
- H.** Statement of assistant principal 2 dated 10/3/08 & attachments
- I.** Statement of teacher 4, unsigned & undated
- J.** ‘Product Evaluation’ documents (3 pages)
- K.** Statement of teacher 1 dated 26/2/08 & attachment
- L.** Year 9 PEP Camp – 2007 – Staff Notes (3 pages)
- M.** Statement of teacher 2 dated 3/3/08 & attachment
- N.** Camp Timetable (3 pages)
- O.** Camp information booklet (15 pages), first pages ‘Contents’
- P.** Statement of assistant principal 1 (former assistant principal) dated 15/3/08 & attachments
- Q.** Handwritten notes of assistant principal 1 (former assistant principal) taken on 28/6/08
- R.** Statement of the teacher dated 17/11/08
- S.** Transcript of interview between the teacher and the Institute’s investigator
- T.** Job application of the teacher dated 1/06/07
- U.** Email from the teacher to teacher 4 dated 1/06/07
- V.** Reference for the teacher from referee 1

The following documents were tendered subsequent to the Formal Hearing:

1. Emails from the teacher to the Institute dated 24 December 2008, attaching the teacher's closing submission dated 23 December 2008 and exhibits
2. Closing submissions in reply on behalf of the Institute, dated 30 January 2008.

THE EVIDENCE

The allegations of serious misconduct/serious incompetence and/or lack of fitness to teach as set out in the Notice of Formal Hearing are:

That during semester 1 of 2007, whilst employed as a registered teacher at the school, the teacher:

- a. Failed to effectively supervise students, in that he:
 - i. Arrived late for classes, including of the first day of term 1 of 2007.
 - ii. Failed to attend an 'in lieu' class.
 - iii. Left students in his classrooms unattended during class time.
 - iv. In May 2007, during a year 9 school camp:
 - o Arrived late to the camp, arriving at around 9.05am.
 - o Arrived late to supervise students at breakfast as rostered, arriving at 8.45am when students had already left the breakfast area.
 - o Failed to effectively supervise students on night duty.
- b. Failed to appropriately discipline students including:
 - i. Allowing students to run around during class.
 - ii. Allowing students to sit and/or stand on tables during class.
- c. Failed to appropriately communicate with students, in that he:
 - i. Used the word 'fuck' in class including:
 - o Telling students words to the effect that if you misbehave you will 'fuck up you work.'
 - o Telling a class to 'fuck off.'
 - o Stating to a student words to the effect of 'if you behave like that...at a TAFE College, they're just going to tell you fuck off.'
 - ii. In May 2007, during the year 9 school camp to told a student that he would send her a message via her 'MySpace' internet site.
- d. Failed to provide a safe and supportive environment for students, in that he:
 - i. Sped in his car in the school zone.
 - ii. In May 2007, during the year 9 school camp:
 - o Sped in his car in the school camp area.
 - o Drove from the camp site to a surfing activity with a student in his car without the student's parental permission.
 - o After driving the student as described above, allowed the student to walk back to the camp site unattended.

- While travelling in his car behind the school bus from the camp, sped and tailgated the bus, which was carrying students.
- e. Failed to engage students in active learning, in that he:
 - i. Failed to provide students with sufficient assessment work.
 - ii. Failed to provide work for his class when he was absent, including:
 - On 24 May 2008, for his year 8 class.
- f. Failed to effectively support colleagues professionally, in that he:
 - i. Failed to complete student's reports on time.
 - ii. Failed to distribute newsletters.
 - iii. Failed to mark and return rolls to the office.
 - iv. Failed to report to staff when he was ill and /or unable to attend work.
 - v. In May 2007, during the year 9 school camp, failed to :
 - Advise colleagues that he was going to be late for the camp.
 - Report to the camp supervisor when requested.

The Panel heard evidence either under oath or by affirmation from the following witnesses:

- The principal
- Assistant principal 3
- Assistant principal 2
- Assistant principal 1
- Teacher 4
- Teacher 2
- Teacher 1

The teacher gave evidence under oath.

The Panel also considered the teacher's evidence from the following contexts:

- minutes of an interview on 28 June 2007 with the principal with assistant principal 1 taking minutes
- interview with the VIT investigator
- statement in response to the specific allegations prepared for the teacher by the Community Legal Centre as amended by the teacher under oath.
- written submission (incomplete) tabled 17 November, day 3 of the hearing
- written closing submission with attachments in response to Counsel Assisting's closing submission

The four principal class members (the principal, assistant principal 1, assistant principal 2 and assistant principal 3) all provided hearsay evidence based on four meetings/interviews with the teacher which discussed complaints made about the teacher at school and at the Year 9 school camp which he attended. These complaints form the basis of the six allegations against the teacher.

The meetings, which were minuted, were as follows:

- Meeting 1: 23 May 2007 with assistant principal 2 and assistant principal 3
- Meeting 2: 29 May with the principal and assistant principal 1
- Meeting 3: 30 May with the principal and assistant principal 1 in response to the teacher receiving a letter from the principal which the teacher considered intimidating
- Meeting 4: 28 June with the principal and assistant principal 1.

The Panel recognised that the hearsay evidence given by the members of the principal class was based on information forwarded to the school administrators by teachers, coordinators and students as part of the normal processes whereby school management is conducted and appropriate concerns about teacher performance are addressed.

Assistant principal 3, in his written evidence, stated that initially, given the teacher's relative inexperience, the school believed concerns about his performance were best handled by an informal mentoring process but by the time of Meeting 1 (23 May) concerns about aspects of the teacher's behaviour had escalated to a degree as to necessitate a formal meeting. Assistant principal 3 stated that the teacher was informed that the meeting was the first step in what could develop into a three stage disciplinary process. Assistant principal 3 said he had stated that he hoped to avoid the second stage – a formal meeting with the principal – and that it was very much the teacher's 'call' as to where they proceeded.

Assistant principal 3 stated that at this meeting he also reminded the teacher that he was on a six months contract position and that towards the end of the contract the school would be advertising the position on 'Recruitment on Line'. He told the teacher he would be eligible to apply for that position along with other candidates. Assistant principal 3 said he also told the teacher, yet again, that at this stage the school had not decided whether to advertise the position as a contract or as ongoing.

In his closing submission the teacher stated that he attended Meeting 1 in his lunchtime because he thought its intention was to discuss a pay increment. Instead he found himself being confronted with complaints about his conduct and the prospect of disciplinary procedures, though at no stage was he informed that it was a three stage process as assistant principal 3 stated in his evidence.

In the Community Legal Centre statement the teacher stated that Meeting 4 was called to give him a chance to respond to complaints and concerns, but as a result of the meeting the principal contacted the employer. The teacher said that at no time during the meeting was he advised that it was 'part of the disciplinary matter.' The meeting, he said was framed by the principal as an opportunity for the teacher to voice his concerns about what he had experienced at the school during his time there. The Community Legal Centre statement submitted that the 'Guidelines for Managing Complaints, Unsatisfactory Performance and Serious Misconduct in Relation to Teachers' issued by the employer were not followed and that 'the teacher was not given adequate support or opportunity to address the complaints against him, nor adequate time to address the issues raised.'

In his closing submission the teacher stated that there were only two meetings and the minutes of the meetings were falsified to show him in the worst possible light. They showed, he said, 'a unified strategy to cover up information and slant it towards defaming (him)'. He said 'Notes of 28th June' (Meeting 4) are a mixture of 2 meetings and 50% false, reordered to paint a warped picture of the teacher.' He stated no attempt was made to consider complaints he made about student behaviour, including death threats made against him, or his positive contributions to the school. The teacher stated that the remarks he made about legitimate victimization he suffered at three previous schools, where his students' work had been deleted mid project, were recorded in a way to skew a perception of him as suffering from a victim complex, e.g. 'victimized again, (which) has happened before'.

Allegation 1a (i): arrived late for classes including the first day of Term 1 2007

Teacher 4, the Technology KLA coordinator who shared an office with the teacher and acted as his mentor, stated that the teacher was often late to classes and there were a number of occasions when he had rung the teacher to find out where he was. He recalled specifically the first teaching day of Term 1 2007 when the teacher arrived late for class somewhere between 10 and 10.30 am. Teacher 4 had rung assistant principal 3 and informed him of this, a statement confirmed by assistant principal 3.

In the Community Legal Centre statement the teacher stated he was late for one class because of the distance between the classroom in which it was being held and the classroom in which he had taught the previous lesson. He had taken steps to rectify this by organising a room change and informing the daily organizer of the change.

In the 17 November submission the teacher stated he may have been on the school premises on the first day and teacher 4 was unaware of this. He said as there was no teaching involved he had not disrupted school operations.

In his closing submission the teacher stated that on occasions he did not arrive at school at the normal start time because he was engaged on school matters such as buying materials. He also stated that the failure of the school to provide evidence of his lateness in terms of 'what, when, where, why, frequency or class' meant one 'can only conclude that the teacher was consistently punctual.'

Allegation 1a (ii): failed to attend an 'in lieu' class

In Meeting 4 (28/6), in response to a complaint about missing an 'in lieu' the teacher is reported to have said 'Whoopy doo. I missed an "in lieu".' He stated that he was overworked with 24 students and that he missed a class that assistant principal 3 witnessed.

In his interview with the VIT investigator the teacher stated that he may have missed an 'in lieu', the date of which had not been specified to him, but he had not been aware of it.

In the Community Legal Centre statement the teacher stated that he may have missed the 'in lieu' but he was not clear about the process for taking one because he had not been

informed of it. He stated that the notices informing teachers of 'in lieu's' were difficult to read and not posted on time.

In his 17 November submission the teacher stated that, given his known location in the Technology area/office, it was unusual that no reminder or call came through to the office phone.

In his closing submission the teacher stated that he was not informed that he had missed an 'in lieu' until Meeting 1 (23/5). He also said that teacher 4's statement that he was not in the office at the time of the 'in lieu' 'showed that he had actually taken the "in lieu".'

Allegation 1a (iii): left students in his classrooms unattended during class time

Teacher 4 stated in his evidence that while a teacher might from time to time go to the preparation area/machine room behind the classroom the teacher was out of the classroom for longer than expected and, a few times, or a longer period than he (teacher 4) would accept. Teacher 4 stated that the teacher's actions 'left his students in an environment where they were at risk.'

In the Community Legal Centre statement the teacher submitted that at no time were his students unsupervised. The teacher recalled three occasions when he left a class. The first was when three other adults were present, an occasion witnessed by assistant principal 3. The second was when he had diarrhoea and had to leave the class urgently. The third was when a student marched out of class and he left to try to bring him back. The teacher said that it was common practice for teachers to go to the preparation area/machine room during class to cut timber or other materials and he had been instructed to do this by teacher 4.

In the 17 November submission the teacher stated that, given the close proximity of, and windows into, the preparation area/machine room it was clear that students were adequately supervised. He stated that teacher 4 had never questioned the length of time he spent in the room.

In his closing submission the teacher reiterated that his students were supervised at all times, even when he was in the machine room and that the three instances where he left the classroom, which he cited included risk assessment actions he undertook before he left the classroom.

Allegation 1a (iv): in May 2007 during a school camp

- *arrived late to the camp, arriving at around 9.05am*

Both teacher 1, a teacher experienced in school camps, and teacher 2, Camp Coordinator, provided direct evidence in support of this allegation.

Teacher 1 stated that prior to attending the camp all staff members received a comprehensive handout pack which included mobile phone numbers for all staff attending the camp. Teacher 1 said that even staff who were not in attendance all week

were made aware of their duties prior to the commencement of the camp, including the need to be ready for an 8am start. Teacher 1 stated that as the teacher had not arrived by the appointed time on 24 May, teacher 2 had appointed him to take the teacher's duty, supervising a surfing activity. Teacher 1 said he first became aware of the teacher's presence when the latter drove up to the surfing activity at 9am. Teacher 1 said that, in his opinion, the teacher was driving at excessive speed towards the surf shop where teacher 1 had been supervising students putting on wetsuits.

Teacher 2 reiterated teacher 1's statement that all staff attending the camp had been issued with a comprehensive camp information pack and had been requested to see her if they had had any queries. She stated that if staff had not attended the briefing at which the packs were distributed she had made sure that a copy was placed in their pigeonholes. Teacher 2 said that she believed the teacher arrived at the camp at about 8.50pm when he had spoken to teacher 5. Teacher 2 said that when she spoke to the teacher about his lateness; he seemed shocked that she was annoyed and excused himself by saying that the journey had taken two and a half hours, not the one and a half he had anticipated.

In Meeting 4 (28/6) the teacher is reported to have dismissed the complaint about his lateness as 'total nonsense'.

In the interview with the Institute's investigator the teacher said 'the school camp was an awkward one' and offered a number of excuses for his lateness, including the fact that he had been up all night preparing work for the extras he would be creating and that he got lost on the way. The teacher stated that he had not received the camp information pack with the map and phone numbers of the relevant teachers, though it had been promised to him. He had the student handout section but not the staff notes. The only number he had was the campsite number. He had rung that and was assured by the person he spoke to that the message would be conveyed to teacher 2 that he was running late.

The teacher reiterated these explanations in the Community Legal Centre statement and added that his late arrival did not affect the effective running of the camp or the students in any way as he was still able to reach his designated activities on time.

In his closing submission the teacher stated that 'it was clear that assistant principal 2 had instructed the Year Level Coordinators to incriminate the teacher somehow' and 'it is also reasonable to assume that before he went to camp teacher 2 was told to pick up any issues with which to accuse the teacher.'

- *arrived late to supervise students at breakfast as rostered, arriving at 8.45 when students had already left the breakfast area*

Both teacher 1 and teacher 2 provided evidence in support of this allegation. Teacher 1 stated the teacher failed to attend breakfast duty 'as rostered'.

Teacher 2 stated that the teacher arrived for breakfast 'where he had a supervisory role' at 8.45am after the students had eaten and been dismissed to tidy their rooms.

In Meeting 4 (28/6) the teacher is reported to have said that turning up late for breakfast was probably a 'fair call'.

In the Community Legal Centre statement the teacher stated that he was not on supervision duty for breakfast and that he was advised that staff attendance at breakfast was optional.

In his closing submission the teacher reiterated that breakfast duty was not rostered and that 'he might have been out there while the other teachers were having breakfast, supervising and kicking the footy around.'

- *failed to effectively supervise students on night duty*

Teacher 1 stated that the teacher had been rostered for duty on the evening of 24 May which involved making sure that students were settled and in bed. Teacher 1 stated that when the teacher arrived for night duty it rapidly became clear to him that the teacher was in no fit state to undertake it. Teacher 1 said that the teacher had spent most of the day at the camp sleeping.

Teacher 2 said the teacher seemed more intent on 'revving (the students) up'. Under cross examination from the teacher, teacher 2 stated she had based her statement on a 15-30 second observation of the teacher engaging, in 'a loudish voice', in conversation with boys in a room as she walked past on her way to the girls' rooms but she was unable to state the content of the conversation.

In his oral evidence the teacher stated that he was not revving the students up and that in fact he was talking to them in a way to settle them down.

In the Community Legal Centre statement the teacher stated that he was in the immediate vicinity of the required supervision but had left the area on the instruction of teacher 6 who told him to go back to bed as he (teacher 6) had the situation under control.

Allegation 1b (i): failed to appropriately discipline students, including allowing students to run around during class

Teacher 4 provided direct evidence in support of this allegation. In his oral evidence he described the metalwork and the woodwork room as 'a pressure cooker' with 'twenty five students, very active working, and you have a few kids in their with discipline problems, you really have to be on the ball. It takes a lot out of you.' He said he 'found that the teacher could handle it from time to time, but other times it just went beyond him.' Teacher 4 stated there were times when he went into the teacher's classes to discipline students. He said he 'expected the teacher to interfere more and be more on the ball than what he demonstrated.' Teacher 4 stated that 'on certain situations in the classroom when it became too much for (the teacher) he just got too aggressive, and he got too angry and that's why he, in my opinion, lost it.'

In the Community Legal Centre statement the teacher recalled that there were several occasions when students ran around in his class and each time the students were heavily disciplined. Students who misbehaved were required to do lunchtime detention where they undertook cleaning tasks or did work that they had missed in class.

In his 17 November submission the teacher stated that this complaint was based on the observation of a teacher, teacher 7, who was competing with him for a position, after supposedly passing his room. He denied that he allowed students to run around. The teacher stated that teacher 4 had indicated he, the teacher, had high expectations of his students and that he had discipline processes in place, including frequently telling off students.

In his closing submission the teacher reiterated his statement that teacher 7 had acted unprofessionally in complaining about his class and took issue with the complaint that she claimed he allowed students to run around the classroom. He stated that when students tried to run around the classroom he stopped them. The teacher said that this allegation characterized him as a teacher with behaviour management problems yet the fact was that students in his classes did what they were supposed to do.

1b (ii) allowing students to sit and/or stand on tables during classes

Teacher 4 stated that he had seen students in the teacher's class 'standing on the tables...watching him demonstrating...I don't allow it myself...When you have a demonstration because there are 25 in the class they are crowding around the bench, they want to see and the big ones are always in the front, so they have a tendency to step on the table, step on the chair, but you can't allow that, you have to tell them to get off.'

In Meeting 4 (28/6), in response to a complaint that students were sitting on tables and fiddling with power sockets during demonstrations, the teacher is reported to have said that 'there is nothing wrong with this.'

In his 17 November submission the teacher stated that he did not let students sit on tables because of nails and glass in 'this environment specifically' but he had once let a student stand on a table because he was complaining that he could not see a demonstration.

In the Community Legal Centre statement the teacher denied allowing students to sit on tables and reiterated his claim that he had once allowed a student to stand on a table to view a demonstration. While doing so the student had held on to a chain from the ceiling that held the power sockets but let go upon instruction. The teacher stated that students regularly used power tools in class and were permitted to plug the tools in and turn them on and off. Due to the location of the power sockets this sometimes required them to stand on chairs and benches to reach them.

In his closing submission the teacher stated that he did not allow students in 'trade workshops' to sit on tables or stand on chairs or tables generally but there had been occasions in his teaching practice when he had made a risk assessment that it was appropriate for students to stand on desks. The teacher claimed that his expertise in industrial design made him able to make appropriate risk assessments about safety on

such matters. The teacher also stated that, once it had been pointed out to him, he had complied with teacher 4's instruction to tell a student to get off a table.

Allegation 1c (i): failed to appropriately communicate with students in that he used the word 'fuck' in class including:

- *telling students words to the effect that if you misbehave you will 'fuck up your work.'*

In Meeting 4 (28/6) the teacher is reported admitting using the word 'fuck' but not saying 'fuck off.' He is reported as saying words to the effect that 'you will fuck up your work' after some disruptive behaviour.

In the interview with the Institute's investigator the teacher said he was, as a Christian, really offended by any notion, any sense that he swears. He used words like 'blooming' or 'crap' or 'shut up'.

In his 17 November submission the teacher categorically denied that he ever made the remark.

- *telling a class to fuck off*

In Meeting 1 (23/5) in response to the statement that a complaint had been received that he had told a class to 'fuck off' the teacher is reported to have said that the kids were being rude and not listening. A written statement from student 1 to Year 10 Coordinator, teacher 3 (Exhibit E) recorded, 'Today the 11th (May) the teacher said to the hole class to fuck off and would rather go to another school and get payed more.'

In his 17 November submission the teacher categorically denied having said this and said that the class, after teacher 3, the coordinator failed to discipline student 1, 'as is expected made false accusations for fun.'

In his closing submission the teacher reiterated that 'he has never sworn at a class as claimed.'

- *stating to a student words to the effect of 'if you behave like that at a TAFE College, they're just going to tell you to fuck off.'*

In the interview with the Institute's investigator and in his 17 November submission the teacher stated that he did say as much to student 1.

In the Community Legal Centre statement the teacher said that this single comment was taken out of context. He had made this remark to student 1 when the latter had been threatening him with a hammer.

Allegation 1c (ii) In May 2007 during the Year 9 school camp told a student that he would send her a message via her MySpace' internet site.

Teacher 1 stated that, while he and the teacher were standing next to one another serving lunch, the teacher said to a female student something like ‘Oh, I’ll either add you as a friend on MySpace, or I’ll contact you, or I’ll send you a MySpace message.’

In his interview with the Institute’s investigator the teacher indicated that he had no problem with using the internet to converse with students as ‘there’s no sense of privacy, it’s a public forum.’ In the instance alluded to in the allegation he stated he had said ‘Look, if you have any questions or any issues about this class you can contact me on MySpace and I’ll answer them there.’ The teacher said that at his previous school everyone was connected via MySpace and no one thought of it as being an issue.

As well as reiterating these points in the Community Legal Centre statement the teacher added that the student in question was never contacted.

In his closing submission the teacher stated that, given his belief in the power of e-learning, he did allow students to add him as a friend on MySpace, but in doing so he was fully aware of the appropriate professional boundaries. He said he did not take the initiative to be added to the particular student’s MySpace as teacher 1 alleged.

Allegation 1(d): failed to provide a safe and supportive environment for students in that he

(i) sped in his car in the school zone.

In Meeting 4 (28/6) the teacher is reported to have said ‘maybe on one or two occasions I might go fast.’

In his 17 November submission the teacher stated that the teacher who made this complaint, teacher 8, was prejudiced against him because of an altercation over sporting equipment. The teacher said that on occasions he revved up his engine and this could be mistaken for speeding.

In his closing submission the teacher stated that he limited speed in built up areas and his car is equipped with safety warnings such as a speed delimitter.

(ii) In May 2007, during the Year 9 school camp to Phillip Island

- *sped in his car in the school camp area*

In Meeting 4 (28/6) this incident is recorded as ‘poor role modelling for students: speeding through school camp –complaint made by camp staff. As above.’ The ‘As above’ referred to the teacher’s reported responses to the complaint about speeding in the school zone, ‘I stick to speed limits (40-60)’ and ‘Maybe on one or two occasions I might go fast.’

In the interview with the Institute’s investigator the teacher said ‘The speeding in the school camp, to my understanding, was when I was approaching the boom gate before the camp actually. I never sped while I was in the campground.... Coming up to the school camp gate I might have been going a bit fast, but after the school gate, I did

not....The accusation was made, this is what – how teacher 2 framed it. She said – and this is problematic, and there’s deceit in what she did, because I rang up the camp later on and talked to them about what actually happened, and – she claimed that, “Oh, a camp person came screaming to us saying, ‘Oh, there’s this guy speeding through the camp, la la la la, is that one of yours? This Volkswagen Golf?’” And – and she said “Oh that’s – that car.” This is what she claimed happened. So I rang up the camp would it – about a month later to – whenever the first allegations were made, and rang them up about what really happened there. She said, “Oh, we’ve never had a complaint against our school.” So she tried to dramatise it and make it as dramatic as possible. She exaggerated. That’s not what’s happened according to the camp leader and a person who make a note of that. It wasn’t such a big issue and the camp leader was actually surprised that teacher 2 had – yes, melodramatic – – –.’

The teacher reiterated these claims in the Community Legal Centre statement.

In the 17 November submission the teacher stated ‘The only time this ‘speeding’ could have happened is before the camp gate as there were speed humps throughout the camp site. And even here it would be difficult to judge speed as this gate is about 100 metres from the office.’

In his closing submission the teacher stated ‘The camp person who reported this has not been identified, they have not stated the speed, they have not stated where, they have not made an incident report as required.’

- *drove from the camp site to a surfing activity with a student in his car without the student’s parental permission*

Teacher 1 stated that a Year 9 student had accompanied the teacher in his car to the surfing activity on the morning of 24 May.

In Meeting 4 (28/6) in response to the complaint that he had transported a student in his vehicle without permission, the teacher is reported to have replied that the student offered to show him the way, it was not unsafe, his action was covered by the ‘day excursion policy’, he did not have a map as had been promised, and he was stressed for time.

In his interview with the Institute’s investigator the teacher said he ‘knew of one case where (he) did that on camp’ and the student had actually jumped in the car to show him the way.

In the Community Legal Centre statement the teacher said that it was his understanding the camp’s permission forms that were signed by the students’ parents gave permission for the students to be transported by staff. He stated that assistant principal 3 had advised him that this was standard procedures for other school related events. He said he had asked for a copy of the school policy but this had not been provided to him.

In his 17 November submission the teacher stated that his car had been fully insured at the beginning of the year for school parking insurance purposes and that an excursion

policy had been filled out for the camp and a school open night at which assistant principal 3 had explained that it was okay to take a student in your car for a meal.

In his closing submission the teacher stated that it had been his experience at previous schools that students had been transported in staff cars and permission had not been required.

Under cross examination from the teacher, assistant principal 3 stated 'Under no stage would I ever say it's all right to have students in a car without full parental written approval.' Regarding the school camp assistant principal 3 stated that 'quite regularly on camps we have a car down there driven by a senior staff member. We have it there for emergency purposes...that car would have full comprehensive insurance, I'd cite that insurance and it would be a designated car and staff, parents would be fully informed.'

- *after driving the student as described above, allowed the student to walk back to the camp site unattended*

In Meeting 4 (28/6), in response to the complaint that he let the student return unsupervised, the teacher is reported to have acknowledged that his action was a 'little bit irresponsible'.

In the interview with the Institute's investigator the teacher stated he made a risk assessment to let the student walk 200 metres back to the camp site because 'that's what he wanted to do' and the student had said 'We do it all the time.'

In the Community Legal Centre statement the teacher stated that 'teacher 1 was also present at the time and did not attempt to stop the student walking back.'

In his 17 November submission the teacher stated that the allegation was false as he dropped the student at the surfing activity under the charge of the supervising teacher.

In his closing submission the teacher reiterated his claim that he left the student in the supervision of teacher 1. He also stated that teachers experienced in camp practice and protocols had given him no guidance as to what to do regarding having students in cars or supervision. Instead, he was expected to 'know every part of the thick staff handbook.'

- *when travelling in his car behind the school bus from the camp, sped and tailgated the bus, which was carrying students*

Teacher 1 stated that after leaving the camp site on 25 May the students were transported some 20km in two buses to undertake a coastal walk prior to return to the school. Teacher 1 said he was on the second bus, travelling in the front seat. He said while on the bus he observed the teacher driving near the bus in an erratic manner for 3-4 minutes, including getting between the two buses, tailgating the first bus and swerving on a gravel road. He stated that initially the teacher had been behind the second bus and got in front of it when they were travelling on a very steep gravel road.

Under cross examination from the teacher, teacher 1 stated that he had no trouble with visibility because of his eyesight, his distance from the teacher's actions, the colour of the first bus or the dust. He said as well as tailgating the teacher may have been fishtailing because of the way in which he was making the back of his car move. At no time did teacher 1 state that the teacher was speeding.

Teacher 1 said that he was told that when the teacher was confronted by other staff about his actions his response was 'give a shit.'

In Meeting 4 (28/6), in response to a complaint made by the bus driver that he was speeding and tailgating the bus, the teacher is reported to have said he may have been tailgating but was not speeding, he wasn't sliding much, in fact he wasn't sliding at all, and there was too much dust for the bus driver to have seen his actions. The teacher is reported to have said that he met with the bus driver on a later occasion and the latter 'was very embarrassed by it.'

In his 17 November submission the teacher stated that the bus driver had been embarrassed because it was teacher 2 'who made a big noise about my driving.' The teacher denied the allegation because he said tailgating implied high speed and close proximity to a car in front and this was impossible at low speeds on a bumpy dirty road. In his closing submission the teacher reiterated his claim that that he could not have been tailgating because of the speed at which it was necessary for him to travel and the amount of dust made it impossible for his actions to be accurately described. He also stated that he could not have been fishtailing as his car was equipped with 'electronic vehicle stabilization'.

Allegation 1e (i) failed to provide students with sufficient assessment work

In Meeting 4 (28/6), in response to the complaint that students had made that there was nothing to 'hang their hats on' regarding assessment and written feedback, the teacher is reported to have said 'Yes! Nothing formal – this needs to be rectified.'

Teacher 4 stated that the teacher failed to complete reports. While he 'kept his own personal records in his diary ...these did not translate to the formal reporting required by the school.'

Assistant principal 3 stated in response to a question about his knowledge of this allegation: 'The main knowledge would be through the fact that when reports fail to come in on time, we then try to – normally under those circumstances if a staff member is not at school and it's report writing time, we try to gather enough information to try to get some sort of report together and so the key thing that became clear fairly quickly was that we couldn't actually find enough assessable work to be able to assess the students and get the reports done.'

Assistant principal 3 said that on the second last day of Term 2 (28/6) he spoke to the teacher about returning school property and also indicated that, given it was the second last day of term, he should not worry about completing his reports as it was far too late to do so. Assistant principal 3 stated that the teacher said he would 'put in an all nighter'

and, even though assistant principal 3 replied that that would not be necessary, he provided the teacher with the phone number of the person in charge of the 'Reporter Package' if he needed it. Assistant principal 3 said that the teacher did not complete his reports.

In the Community Legal Centre statement the teacher denied the allegation, stating that 'Assessment methods are complex and varied and that (he) used a combination of formal and informal evaluation methods, including a planner, a self evaluation form, oral feedback during class and informal grades for each project and final assessment.'

In his 17 November submission the teacher referred to a document 'U-Unit Planner and Self Evaluation Year 10 Woodwork –Term 2 2007' which he stated demonstrated 'a detailed sequential plan of work with weekly targets with due dates and criteria, with assessment scores' which were provided for all classes and which meant 'students always know what to do and what is expected for assessment'.

In his closing submission the teacher attached 'Report Data for Term 2 2007' (Exhibit Y) for the teacher's 'most challenging class' and 'X2 Year 8 Wood Progressive Forms 2007' (Exhibit Z 15) to support his denial of this allegation. The teacher stated that these demonstrated 'a full set of scores (was) ready for reports' and indicated that assistant principal 3 lied when he said that 'we couldn't find enough assessable work to grade here.' The teacher stated he had been given the manual for entering assessments on the schools database too late (28 June 2007) for him to learn the relevant complex computer package and as the school knew that he was on sick leave it was the responsibility of the replacement teacher to enter the assessments based on the documentation the teacher had provided.

Allegation 1e (ii) failed to provide work for his class when he was absent, including on 24 May 2007 for a Year 8 class

Teacher 4 stated that when he rang the teacher to remind him not to be late for the camp on 24 May the teacher said that he (teacher 4) 'should organise some work for his (the teacher's) kids. Which in the end I had to do.'

In Meeting 4 (28/6), in response to complaints about not providing work for classes when absent, the teacher is reported to have said that 'Can't say that I have provided work on 100% of occasions', 'I am not an angel on this one' and 'What can I leave because the work is practical?'

In the Community Legal Centre statement the teacher admitted there were occasions when he did not provide work when he was absent but believed that this was related to the period when he was absent from school towards the end of the semester, in particular the period between 18-29 June 2007.

In his 17 November submission the teacher asserted that students would have had work to continue in sequence.

In his closing submission the teacher stated that he emailed teacher 4 on the morning of 24 May with work for his Year 8 extra and the normal practice would have been that teacher 4 would have printed out the email and left it as an extra sheet on the teacher's desk. The teacher offered seventeen 'possible scenarios' as to what might have happened to the email or why it was not utilized for providing work for the extra. The teacher stated that the fact that no complaint was made about another class later on 24 May or for classes on 25 May meant that work was provided by him for these classes.

Allegation 1f (i): failed to complete student reports on time

Assistant principal 3 stated that he was aware of the fact behind the allegation because 'I oversee assessment and reporting. The teacher was not at school in the last two weeks of Term 2...I had rung him on a number of occasions to try and find his whereabouts and at what stage he was at with reports. By then reports were well and truly being printed off and finalized and so we were well aware that we weren't going to get those reports in.'

In his oral evidence the teacher stated 'I could not complete the reports because of institutional bullying.' He said 'The reason I did not provide reports is twofold. One I was in such a panic about base level needs such as food, shelter, and money even, that I – those were my immediate needs. And the second is an extreme depression, to the verge of suicidal tendencies, on the basis that anything that I had to offer the world, or anything that I have done, or anything that I am, was essentially nullified by the actions of these three principals.'

In Meeting 4 (28/6), in response to a complaint about reports not being completed on time for reading/checking, the teacher is reported to have said 'I will be in tomorrow to do these.' As assistant principal 3 stated above, the teacher did not complete his reports.

In the interview with the Institute's investigator the teacher stated that he began doing reports but became 'extremely depressed'. He said assistant principal 3 had said to him 'Don't worry about it. If you can't handle it.' The teacher said he made an effort to learn the specific reporting system but he was 'really out of it.'

In the Community Legal Centre statement the teacher said he 'attempted to learn the specific reporting system but admits that he was unable to master it, particularly in the mental state he was in at the time.'

In his 17 November submission the teacher reiterated what he said assistant principal 3 had said to him about not completing reports and that he had not been trained in the reporting system.

In his closing submission the teacher stated that it was the administration's responsibility to ensure that his replacement teacher completed the reports.

Allegation 1f (ii): failed to distribute newsletters

Assistant principal 3 stated that it was his role to oversee the distribution of newsletters which were placed outside his office every Thursday. The expectation was they would be

picked up for distribution by staff or students sent down by staff. Assistant principal 3 stated he could recall three or four times when newsletters for the teacher's class had not been collected.

In Meeting 4 (28/6), in response to a complaint that he had not distributed newsletters, the teacher is reported to have said that if he did not distribute them on the Thursday he did so the next day, and that he appointed a student to collect them but did not follow through on making sure that that had been done.

In the Community Legal Centre statement the teacher admitted that he struggled with the system for distributing the newsletters but attempted to distribute them as soon as possible.

In his 17 November submission the teacher asserted that the distribution of the newsletters was the responsibility of student monitors.

In his closing submission the teacher asserted it was never his job to distribute newsletters. It was the form monitor's responsibility and was an annoying disruption to learning.

Allegation 1f (iii): failed to mark and return rolls to the office

Assistant principal 3 explained the school's roll marking procedures. He stated that every teacher was required to mark attendance in their chronicle for each of their classes except for periods 1 and 5 for which the school had an auditing system which required staff to mark roll slips, which had been distributed in their pigeon holes, in the first 15 minutes of the period and return them to an attendance officer in the general office. The roll slips for all classes, except Year 12 which had a roll monitor, were returned by students from those classes. Assistant principal 3 stated that the attendance officer mentioned on a number of occasions that 'the teacher regularly didn't get his rolls down to her.'

In Meeting 4 (28/6), in response to the complaint that he did not mark rolls and return them to the office, the teacher is reported to have said that 'rolls get in the way of the momentum of the class' but he had responded to the criticism and had started doing them at the beginning of the class once he had been spoken to about them.

In the Community Legal Centre statement the teacher admitted that he sometimes got his audit rolls to the office late but did not fail to mark and return them. The teacher said he was accustomed from his previous school to taking the roll at the end of the class to avoid distracting the students from their work. In his 17 November submission the teacher stated that marking and returning rolls was 'actually the student's responsibility' and 'Also the procedure had changed it seems, and so was not in the staff handbook. As with all other activities I was not made aware of the procedure effectively and followed teacher 4's guidance which was something like "...it's the student's responsibility.'"

In his closing submission the teacher stated that 'a roll monitor came around, not like assistant principal 3 says, the teacher sends them down.' The teacher also referred to an

attachment, 'Absentee slip' for period 5 (Exhibit Z2) which stated 'Send to the Office before 2.00 pm.'

Allegation 1f (iv): failed to report to staff when he was ill and/or unable to attend work

Assistant principal 3 stated that he was aware on 'at least three occasions when the teacher didn't arrive at school and we'd had no contact as to his whereabouts.'

Teacher 4 stated there were 'some incidents where I had to ring (the teacher) up, where he is in the morning.'

The principal, in his written evidence, stated that between 18 and 27 June 2007 the teacher failed to turn up for teaching duties and the principal became very concerned about his welfare. The principal stated that on 26 June he telephoned the teacher's father and enquired as to whether he had seen his son or knew where he was. The principal said that the teacher's father said he thought that the teacher had been coming to work and he would try to find him. The principal said that the teacher's father later reported to him that he had been unable to locate the teacher. The principal said that he tried to ring the teacher on his mobile but there was no answer.

In Meeting 4 (28/6), in response to the complaint that he had failed to inform the school of his illness or his inability to attend, the teacher is reported to have stated that he rang in every day and had been told 'NO' by the daily organiser and staff. The teacher is reported to have said on one occasion he said it would be 2 x days, on one occasion he 'went off the deep end', on two occasions he was looking for work, and on one occasion he was ill.

In the Community Legal Centre statement the teacher said he believed this allegation related to the period between 18-29 June 2007 when he had been stressed and depressed because of the allegations against him. The teacher noted that the principal had expressed 'concerns for the teacher's wellbeing, and fears he might be suicidal', to the extent that he contacted the police about the teacher's welfare. The teacher stated that the principal's allegations actively created his stressed and depressed state of mind, and that previously he had been diligent about notifying the school if he were ill or had school related tasks that would keep him away from the school in the morning.

In his closing submission the teacher stated 'A sick note covered the teacher's time off at the school for this entire period.'

Allegation 1f (v): In May 2007 during the Year 9 school camp, failed to:

- *advise colleagues that he was going to be late for the camp*

Teacher 1 and teacher 2 provided evidence regarding this allegation under Allegation 1 a (iv) dot point 1

- *report to the camp supervisor when requested*

Teacher 2 stated that the teacher was told by teacher 5 when he arrived at the camp at approximately 8.50 am that he should report to her. She said he did not do so until 9.10 am.

In his closing submission the teacher stated that on arrival at the camp he had to find his bearings on arriving, including going to the camp office to inform them that he had arrived and locate teacher 2 who 'wasn't around, being away on an emergency, even on her set activity. Making it impossible to report in.'

DISCUSSION OF THE EVIDENCE

The teacher chose to represent himself. In considering this the Panel was mindful of the decision in *Tomasevic v Travaglini and Amor (2007) VSC 337* regarding the rights of a self represented litigant. In particular the Panel took due notice of the need to recognize, and even compensate for, a self represented litigant's lack of a legal background and his emotional engagement in, as well as strong sense of grievance, about the case. The Panel believed it was conscious of these factors in its conduct of the hearing, allowing the teacher as much procedural leeway as possible in the manner in which he put his arguments, cross examined witnesses and even aired his grievances. The Panel carried this same awareness into its examination and discussion of the evidence, given its recognition of how emotionally raw the teacher still was about his sense of grievance about his experiences at the school.

The Panel accepted Counsel Assisting's characterization of the teacher's conduct at the hearing as 'intemperate, uncontrolled, aggressive, and bullying.' Nevertheless the Panel has made every effort to ensure that that conduct has not influenced its deliberations on the evidence or the determinations it has made.

In its conduct of the hearing the Panel allowed the teacher 'space' to air his grievances. They were many, including:

- that the teacher was a victim of 'institutional bullying' by the school
- that staff members who made complaints about him were motivated by ulterior motives such as competition for a teaching position or altercations over sporting equipment.
- that the teacher was a victim of political division within the school regarding the appointment of a school chaplain
- that assistant principal 2 and assistant principal 3 betrayed their Christian principles in their treatment of him
- that meetings held to discuss his complaints became disciplinary procedures that did not follow due process
- that at those meetings the principal class personnel did not take into account the quality of the work his students produced or his contribution to the school in general
- that the principal class personnel ignored his complaints about student behaviour, including death threats against him

- that he had been promised by assistant principal 3 at his job interview that he would be offered an ongoing position after his six month contract, and the school had reneged on this agreement
- that the school treated him as an inexperienced graduate despite his nearly ten years of experience
- conversely, given his relative inexperience, the school failed to provide him with appropriate mentoring and guidance.

In his closing submission the teacher also asserted that:

- the number of meetings and minutes of the meetings held to discuss his performance were falsified to show his performance and mental state in a derogatory light
- that staff members at the Year 9 school camp, especially teacher 2, were in collusion with assistant principal 1 to gather evidence against him
- that the employer had denied him natural justice in the conduct of the investigation.

The Panel informed the teacher on several occasions that it was confined to considering the six allegations before it and that there were other bodies where he could pursue his grievances against the administration and staff members at the school.

The Panel was aware of the emotional stress that the teacher felt because of the above grievances. Nevertheless it still found him a problematic witness. His emotional volatility made it difficult for him to focus on an examination of, or explanation of, the facts behind the allegations. He often offered contradictory explanations or rationales, seeming to admit on one hand and deny with the other. In particular the Panel contrasted the evidence provided by the teacher in the Community Legal Centre statement endorsed by him, his interview with the Institute's investigator and that offered in his closing submission forwarded after the hearing. In the former the teacher made credible and discriminating attempts to answer the allegations, admitting to some, challenging others. In his closing submission he made extravagant assertions about fabricated minutes of meetings and collusive behaviour on the part of staff, introduced new evidence that could not be tested under oath, and wove what could only be considered fanciful hypothetical scenarios as to why allegations could not be true (for example, the seventeen scenarios regarding the email related to the Year 8 extra or the seemingly logical process whereby the teacher deduced, because teacher 4 could not find him in the Technology office, that he was actually, taking the 'in lieu' class.)

The Panel found assistant principal 3 a credible witness, conscious of his legal responsibilities as a school administrator, who gave clear and comprehensive evidence about his concerns about the teacher's performance in areas that came under his jurisdiction. These included the comprehensive documentation required for permission to transport students in staff cars, the distribution of newsletters, the collection and auditing of class rolls, and the school's assessment and reporting processes. The Panel also accepted his explanation that he had made clear to the teacher that, while there may have been some talk of the possibility of ongoing permanency at the initial job interview, as teacher 4 suggested, it was not within assistant principal 3's authority to make any

definite offer. The Panel understood that ongoing positions require statewide advertising and are open to competition as assistant principal 3 made clear in his evidence.

Regarding the allegations related to classroom practice, the Panel gave considerable credence to teacher 4's evidence as he was the teacher most familiar with the teacher's work habits and classroom management. Also teacher 4 was well disposed to the teacher as a teacher of considerable talent and potential, and it was clear that the teacher respected him in return. Nevertheless it was also very obvious that teacher 4 had clear reservations about the teacher's capacity to sustain his teaching performance in the 'pressure cooker' context of teaching in the Technology area because of his temperament and character, what teacher 4 saw as 'arrogance', 'immaturity', and a 'lack of insight and commonsense'. He made it clear that the teacher allowed student behaviours in his classroom that put them 'at risk' of a kind that teacher 4 would not tolerate in his own classroom. He said, on several occasions he stepped into the teacher's classroom to discipline students. While he provided no direct evidence of the teacher saying 'fuck' or telling a whole class to 'fuck off' he characterized a classroom where the teacher often 'lost it' and became 'too aggressive' and 'too angry'. In such a context it is possible to believe that the teacher used intemperate and inappropriate language beyond 'blooming', 'crap' and 'shut up'. The Panel saw no reason to doubt the veracity of student 1's letter of complaint on this matter.

It was also obvious to the Panel that teacher 4 took his mentoring, whether it was regarded as official or not, seriously, ringing the teacher when he was late several times, advising him to go on the camp as a way of demonstrating his commitment to the school's extra-curricular program and ringing him to make sure he would arrive on time. However, as teacher 4 said, in his oral evidence of his 'mentoring' of the teacher and his observation of the teacher's response to that, 'I'd been supporting him all the time, as far as possible, but I came to a point where I said, "Well, how long is a piece of string and how far you can push it up hill", and I had to step back. I just let – just things happen the way they are. I mean I've done my part now, it's up to someone – I mean you put someone on the bike but they have to do the pedalling. I mean, that's how I describe, ah, the teacher for that. I mean I put him on the bike, I gave him a push, he had to do the pedalling, but then the hills became too steep, in a way.' Regarding the allegation related to work not left for the Year 8 extra teacher 4 was adamant that the teacher rang him and expected him to prepare work for his classes. There had been no mention by the teacher of an email confirming the work and teacher 4 never sighted one.

Considering the allegations associated with the school camp, the Panel understood the need for teachers to be doubly conscious of both their specific responsibilities and the general need to be proactive, that is, in a sense, to be 'on deck' at all times. The Panel believed it was the teacher's responsibility to make sure he had accessed the camp manual and understood its requirements of staff, and not the responsibility of teacher 2 to make sure he had personally sighted a copy. In fact the Panel felt that the teacher's somewhat cavalier attitude to documentation related to his duties, be it the camp manual, permission forms for transporting students, the staff manual or the reporting package for the computer was in part, a good deal of his problem about respecting the school's protocols and procedures. Whether he recognized it or not it was his duty to 'know every part of the thick staff handbook.'

Regarding the camp itself it was obvious to the Panel that the staff were on 'red alert' about making sure the teacher fulfilled his responsibilities. This began with teacher 4 ringing him to make sure he was there on time through to him carrying out both his specific and general responsibilities. The Panel believed that everything about the teacher's behaviour showed an unseemly haste and unpreparedness for camp duty, from driving at speed to the camp site entrance, even though there was doubt as to whether he sped in the camp site itself, through transporting a student in his car and allowing the student to return to the camp site unsupervised, through to his behaviour on the trip to the coastal walk on the last day of the camp. Regarding breakfast supervision, even though teacher 2 and teacher 1 described it as rostered duty, the Panel noted there was some ambiguity in the camp booklet regarding this duty as no staff were specifically rostered for it, though a fair assumption would be that this was an occasion when all staff were required to be 'proactive'. Regarding the teacher's behaviour on night duty the Panel noted there was conflicting evidence regarding whether the teacher had undertaken it haphazardly, or whether he was relieved of his supervision by teacher 6. Either way, the Panel believed the teacher offered a plausible explanation of his behaviour in the incident alluded to by teacher 2 about him "revving up" the students and thought she was perhaps a little too hasty in her judgment given the short amount of time she observed the incident. Regarding the conversation with the student about a posting on MySpace the Panel queried whether it was a legitimate allegation of incompetence/misconduct. The teacher may have spoken about a posting, which he readily admitted, but he did not make contact with the student on MySpace and, even if he had, the Panel believed a good deal more about the nature of the communication would have been required before it became the subject of complaint.

Two camp related incidents were of particular concern to the Panel. One was the teacher's transporting a student in his car to the surfing activity and his attempt to rationalise his action by saying such behaviour had been condoned by assistant principal 3 in a previous context. The Panel found it impossible to believe that any principal class member would offer such advice offhandedly, especially in the context of teachers taking students on excursions, given the lengths schools are required to go to in seeking insurance for such matters.

The other was the incident of the teacher's driving in between the buses on the excursion to the coastal walk on the last day of the camp. While teacher 1 might have been unsure of the exact terminology to describe the teacher's driving he was in no doubt that the teacher was engaging in a dangerous practice by the manner in which he drove between the two buses containing staff and students on a steep gravel road. A view teacher 1 said was shared by other staff who expressed their annoyance directly to the teacher. Furthermore, teacher 1 maintained his version of the incident under sustained, intensive, at times aggressive, and often specious questioning from the teacher.

The Panel considered the allegations related to insufficient assessment for end of semester reporting, reports not being completed on time and unexplained absences from work related directly to what the teacher himself admitted about his stress, anxiety and depression. The Panel found the teacher's admission in his oral evidence of his depression and 'suicidal tendencies' realistic and poignant. His account of his depression made it feel very palpable. It confirmed for the Panel what both assistant principal 3 and the principal

stated in their evidence about their unsuccessful attempts to make contact with the teacher during the last weeks of term. By contrast the Panel found the teacher's extravagant denials of these allegations in his closing submission unconvincing. In particular the Panel viewed with considerable scepticism the evidence regarding assessment the teacher produced with his closing submission. Given the plethora of evidence he produced during the hearing the Panel could only speculate as to why such a vital piece of evidence should be produced after the hearing when its authenticity could not be tested. The Panel expressed similar scepticism about the teacher's claims that he had a sick note to explain his absences or that he had regularly contacted the school to report his absences, and preferred assistant principal 3 and the principal's evidence that the teacher's absences were unexplained and efforts they made to contact him, including on the principal's part enlisting the support of the teacher's father, were unsuccessful.

The Panel considered the evidence provided by the principal class members regarding their meetings with the teacher credible. Even though much of it was hearsay the Panel considered it appropriate as it reflected the normal process of management within a school. Indeed the Panel believed the principal class members would have been derelict in their duty if they had not investigated the complaints about the teacher's performance. The Panel believed that the teacher's assertion in his closing submission that the principal class members falsified the number of meetings and the minutes of such simply strained credulity. In particular the Panel noted that the minutes of Meeting 4 (28/6) quoted the teacher extensively in response to complaints made about him, and the quotes had a ring of authenticity about them. It is hard to conceive of the principal and assistant principal 1, given their demeanours, co-fabricating the statement, 'Whoopy doo! I missed an "in-lieu"'. In the hearing the teacher had ample opportunity to challenge the veracity of what he is reported to have said at this meeting, and he did not.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel found the following allegations unproven:

Allegation 1a (iv): the teacher offered a plausible account of procedures he used to attempt to settle students after lights out.

Allegations 1d (i) and 1d (ii) dot point 1: The Panel notes that both allegations relate to speeding in a restricted area (the school zone and the camp site) and that no direct evidence was provided of either incident. The Panel also notes the teacher's comment in Meeting 4 that 'Maybe on one or two occasions I might go fast' may not be directly related to driving in restricted areas.

Allegation 1f (v) dot point two: the teacher offered a plausible account of the delay between his arriving at the camp and his sighting by teacher 2 in that he gave priority to making sure he was able to supervise the surfing activity.

The Panel finds Allegation c (ii) proven but questions why it is included in the list of allegations. While it is a fact that the teacher made the remark, the Panel does not believe that communicating via MySpace is, per se, evidence of misconduct on the part of a

teacher. The issue, as with any kind of communication between teacher and student irrespective of the medium, is the appropriate content of the communication.

The Panel found the following allegations proven:

Allegation 1a (i) on the basis of evidence given by teacher 4.

Allegation 1a (ii) on the basis of the teacher's admission that he may have missed an 'in lieu' in Meeting 4 with the principal and assistant principal 1 and in the Community Legal Centre statement.

Allegation 1a (iii) on the basis of evidence provided by teacher 4.

Allegation 1a (iv), with the exception of the last dot point relating to night duty, based on corroborative evidence given by teacher 2 and teacher 1.

Allegations 1b (i) and (ii) based on direct evidence given by teacher 4.

Allegation 1c based on the teacher's admission in Meeting 4 that he said 'fuck' though not 'fuck off'. The Panel accepts that the evidence provided in a letter of complaint about the teacher telling the class 'to fuck off' written by Year 10 student, student 1, to Year 10 Coordinator, teacher 3 and forwarded to the school administration is not direct evidence and was not tested at the hearing. The teacher also admitted that he had said to a student that 'if you behave like that at a TAFE College they're just going to tell you to fuck off.' Teacher 4 also provided evidence that the teacher became too aggressive and angry in his class and, while he provided no direct evidence that he heard the teacher use the word 'fuck', the Panel believes that that aggression and anger would have involved intemperate and inappropriate language.

Allegation 1d (ii) with the exception of dot point one related to speeding in the camp site area, on the basis of evidence provided by teacher 1.

Allegation 1e (i) based on evidence given by assistant principal 3.

Allegation 1e (ii) based on evidence given by teacher 4.

Allegation 1f (i), (ii) and (iii) based on evidence given by assistant principal 3, and admitted to, in part, by the teacher in the Community Legal Centre statement.

Allegation 1f (iv) based on direct evidence given by assistant principal 3 and the principal

Allegation 1f (v) dot point one based on evidence given by Teacher 2.

The Panel finds that Allegation 1d (ii) dot point four constitutes serious misconduct as described in *Parr v Nurses Board of Victoria VCAT (2 December 1998)* Kellam J observed:

It must be a departure, in a substantial manner from the standards which might be reasonably expected of a registered nurse. The departure from such standards must be blameworthy and deserving of more than passing censure.

The teacher engaged in a form of driving which amounted to reckless exhibitionism which could have put not only his own safety but that of the students and staff in the buses at risk. It is simply unconscionable for a teacher to engage in such behaviour, especially in the context of a school excursion, where regard for student safety is of paramount importance.

The Panel determines that the behaviours described in the other proven allegations, considered individually, indicate incompetence rather than serious incompetence. The Panel believes that had the teacher proved less emotionally volatile in the meetings called to discuss his performance, especially in the initial meeting, Meeting 1 (23/5) with assistant principal 3 and assistant principal 2, he might have seen them as opportunities to discuss the complaints and to receive supportive feedback about strategies to address them, instead of quickly jumping to the conclusion that the principal class members were conspiring against him. The Panel acknowledges that, throughout his evidence, the teacher did indicate that he took steps to modify behaviours related to punctuality, classroom discipline, roll marking and newsletter distribution. More focus on such strategies would have helped enormously in ensuring that the deterioration of his performance did not escalate as it did after Meeting 1(23/5), as his behaviour at the school camp immediately after and his subsequent erratic behaviours at school for the remainder of his contract demonstrate. The pity is that, in a reflective moment in his testimony, the teacher showed a glimmer of insight into that possibly being a better way of dealing with matters than seeking to sheet the blame home to the actions or intentions of others. When asked by the Panel if he found himself in a similarly stressful situation, what he might do differently from 'what he did at (the school) in the last four weeks particularly' he replied, 'The very simple answer is better communication with the person responsible for the reports, and better communication with in this specific event, probably teacher 4 would have organized something.'

The Panel also determines that collectively the proven allegations do not constitute serious incompetence or misconduct. Instead they suggest a teacher finding it increasingly difficult to deal with the daily routines and administrative processes that are required of teachers if students are to be guaranteed a safe and supportive environment, if colleagues are to be supported professionally and if schools' administrative processes are to function effectively.

It is in the light of the above observations that the Panel viewed the allegations which related to the teacher's performance in the last weeks of Term 2 as raising questions about the teacher's fitness to teach. They are allegations relating to a failure to provide sufficient assessment work, failure to complete students' reports on time and failure to report to staff when he was ill and/or unable to attend work. The Panel has no doubt that these were the direct consequences of the 'stress, depression and anxiety' the teacher said he felt because of the allegations made against him in Meeting 1 on 23 May 2007. The teacher attributes those feelings directly to what he believed to be the school's 'institutional bullying' which he said undermined his sense of worth and credibility. The

Panel recognises such a belief exacerbated the teacher's stress and depression, as no doubt did his anxieties about future employment, but it also believes that the causes are more complex than that. The Panel believes evidence of the stressors, which may well be inherent in teaching, and the teacher's inability to cope with them, were evident in the teacher's performance well before Meeting 1. Evidence of them is there, in particular, in teacher 4's evidence of the 'pressure cooker' nature of teaching in the Technology area and his observations of the teacher's increasing inability to cope with the pressure of such. There is little doubt that teaching thrives on idealism and creativity, and the teacher demonstrated, in his testimony and his supporting materials, that he possesses both in abundance. However teaching is also about dealing with the mundanities of the daily grind on a regular and consistent basis, which requires making sure you turn up to class or duties on time, dealing with classroom behaviour without 'losing' it, covering extras, reading the relevant manuals and documentation, adhering to school protocols for informing about absences from work, roll marking, newsletter distribution and assessment and reporting deadlines and other such tasks. The teacher failed to acknowledge his inability to consistently meet those requirements. He also failed to recognise that his failures to meet them were symptoms of his stresses and anxieties. It is for those reasons that the Panel determines that the teacher is unfit to teach at the present time.

In making this determination the Panel was mindful of the words of Justice Harbison, Vice President and Mr. Eccles, Member at [169] when addressing issues in relation to *Davidson v Victorian Institute of Teaching* [2007] VCAT 920.

We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom.

The Panel makes clear that in determining the teacher's unfitness to teach it is not a judgment on his character or his temperament as it manifest itself throughout the hearing. Rather it is a judgment on how he might 'conduct himself in the future in the classroom', as well as in his dealing with his colleagues and the school administration. When asked by Counsel Assisting 'In the event that you were to experience similar stress in the future, would it not be the case that similar symptoms would manifest themselves?' the teacher replied 'Would my personal resilience give way to the abuse next time if I did stick at it? And who can answer that question?'

The Panel was also mindful of the ruling on conduct related to a psychiatric condition in *The Victorian Bar Incorporated v Himmelhoch* [1999] VSC 222 of the need to consider evidence as to current and past treatment, and evidence as to future psychiatric health because of the teacher's own references to his stress and depression and actions he had taken because of them.

The teacher informed the Panel his 'doctor did recommend me to go to see a psychiatrist and I did go and see that psychiatrist. The key problem was money, because you know, it's like \$70 after the rebate per session, and so money was a big issue. So I actually did

quite a few sessions, but you know I was already in debt, and he didn't actually come up with anything new, I thought, so it was a difficult time, but I did take initiative that way.'

The teacher also informed the Panel that 'I did go to Centrelink because I realized that I'm going to be in a bit of a crisis, and Centrelink actually did give me a bit of profiling, which I hadn't brought up here because I think some of it's wrong, some of it's also very accurate. I know a few things about cognition, the mind, yeah, their opinion was that I'm experiencing a really deep trauma, and it's not just from this event, it's actually, you know, from a series of disappointments over the years, usually related to the teaching profession.' Given the teacher's admission that he does not know if he could handle the stresses associated with teaching at this time, the Panel concluded that it must cancel the teacher's registration to protect the public.

The teacher is able to seek re-registration with the Institute at any time in the future. The registration process will enable the Institute to assess the teacher's fitness to teach at that point in time. In doing so the Institute would be fulfilling its duty to consider both the public interest and the reputation of the profession, as well as being mindful of the well being and livelihood of the teacher.



TERRY HAYES, CHAIRPERSON



**per:
ANNE FARRELLY, REGISTERED TEACHER**



**per:
NORM FARY, PANEL MEMBER**