

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 086

REGISTERED TEACHER: Leigh Brian MURRAY

PANEL MEMBERS: Susan Halliday, Chairperson
Anne Farrelly, Registered Teacher
Norm Fary, Registered Teacher

ATTENDANCE: The teacher attended the Formal Hearing and was self-represented
Ms G Hubble Counsel Assisting with Ms C Sherman instructing

DATE OF HEARING: 28 and 29 April 2009

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

On 17 July 2009, the Panel decided to suspend the teacher's registration for a minimum of 12 months. The following conditions have been placed on the teacher and the conditions are to be met in full before the suspension of registration is removed.

Attend a series of 10 psychological sessions within the 12 month period. The psychologist is to be a person with expertise that covers educational settings and the professional standards expected of teachers.

Provide the psychologist with this Hearing report, in its entirety, prior to the sessions.

Provide a psychologist's report to the Institute at the end of the 10 sessions that discusses the teacher's progress/understanding with respect to each of the following areas that is to be covered in the sessions.

- Review of the teacher's flawed thinking and his exploitation of the student
- Sound reflection of the circumstances and consequences from the 'shoes' of affected parties
- Understanding adolescent mindsets and behavioural tendencies.
- Separating the 'personal' from the 'professional'
- Proper professional teacher - student relationships
- Establishing appropriate boundaries and identifying risks to boundaries
- The parameters accorded to student welfare and pastoral roles
- The mapping of personal strategies to avoid any future issues
- The Victorian Institute of Teaching Code of Ethics
- The Victorian Institute of Teaching Code of Conduct

The teacher is to complete his own report, after all sessions have concluded, identifying what he has learned and any additional reflections on what happened. The report must satisfy the Panel that the teacher has reflected on his conduct and developed strategies for managing his relationships with students appropriately. This report is to be provided following the 10 sessions with the psychologist, and should be forwarded at the same time as the psychologist's report.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching since 31 December 2002.

By letter dated 22 July 2008, the principal of the school notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The notification was considered by the Disciplinary Proceedings Committee (the Committee) on 13 August 2008 and the Committee decided to refer the matter for investigation. On 3 December 2008 the Committee considered the investigation report and referred the matter to a formal hearing.

A Notice of Formal Hearing dated 3 March 2009 was served upon the Teacher by registered post on 5 March 2009.

An amended Notice of Formal Hearing dated 23 April 2009 was served upon the Teacher by express post on 24 April 2009.

On 24 March 2009, the Panel issued summonses to Singtel Optus Pty Limited, Vodafone Pty Ltd, Hutchison Telecom Pty Ltd and Telstra Corporation Ltd.

DOCUMENTS CONSIDERED

The Panel was provided with the following documentary evidence:

1. The teacher - Registration Details (1 page) **001**
 - o Document entitled 'Chronology' (2 pages) **002 - 003**
2. Witness statement of the principal, dated 30 October 2008 (2 pages) **004 - 005**
 - o Attachment 1 – Memo from the principal (2 pages) **006 - 007**
 - o Attachment 2 – Notes of interview, dated 17 July 2008 (1 page) **008**
 - o Attachment 3 – Notes of interview, dated 17 July 2008 (1 page) **009**
 - o Attachment 4 – Notes of interview, dated 17 July 2008 (1 page) **010**
 - o Attachment 5 – Notes of interview, dated 17 July 2008 (1 page) **011**
 - o Attachment 6 – Letter to the teacher dated 22 July 2008 (1 page) **012**
 - o Attachment 7 – Letter to the teacher dated 22 July 2008 (2 pages) **013-014**
 - o Attachment 8 – Document entitled: 'Responses to points of allegations' (undated) (4 pages) **015 - 018**
 - o Attachment 9 – Letter to the teacher dated 31 July 2008 (1 page) **019**
3. Witness statement of teacher 1 dated 23 October 2008 (2 pages) **020 - 021**

- Attachment 1 – Memo dated 17 July 2008 (2 pages) **022 - 023**
- 4.** Witness statement of student 1 dated 22 October 2008 (2 pages) **024 – 025**
- 5.** Witness statement of student 2 dated 22 October 2008 (1 page) **026**
- 6.** Witness statement of student 3 dated 21 October 2008 (2 pages) **027 - 028**
- 7.** Transcription of interview with the teacher dated 12 November 2008 (35 pages) **029 - 063**
 - Attachment 1 – Written Statement by the teacher (5 pages) **064 - 068**

The following exhibits were accepted by the Panel:

- A** Document entitled ‘Summary of Telephone Contact’ enclosing:
 - Witness Statement of Support Liaison Officer at Virgin Mobile attaching telephone records.
 - Witness Statement of Legal & Court Support Officer at Telstra Corporation Limited attaching telephone records.
 - Witness Statement of Support Liaison Officer of Singtel Optus Pty Limited attaching telephone records.
- B** Extract of ‘Elegant’ 2008 desk diary.
- C** Witness statement of the principal, dated 30 October 2008.
- D** Bundle of handwritten notes of meetings referred to in the principal’s witness statement.
- E** Bundle of documents from school 1.
- F** Witness statement of teacher 1 dated 23 October 2008.
- G** Witness statement of student 3 dated 21 October 2008.
- H** Photograph of the school students.
- I** Witness statement of student 2 dated 22 October 2008.
- J** Witness statement of student 1 dated 22 October 2008.
- K** Transcription of interview with the teacher dated 12 November 2008, attaching written response.

- L Bundle of documents including the school magazine 2008, letters and minutes of meeting dated 4 December 2008.

THE EVIDENCE

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

In 2008, whilst registered as a teacher in Victoria and including whilst employed at the school, the teacher:

1. Engaged in inappropriate communication and/or contact with year 9 student of the school, the student, including:

- 1.1 Engaging in SMS messaging with the student via his mobile telephone for reasons unrelated to her education including:

- a. In or around June 2008, initiating SMS messaging with the student including:
 - i. By texting her and asking her what she had been up to.
 - ii. As a means of releasing pressure which had been building up in his home life.
 - iii. For the purposes of receiving emotional support from the Student.
- b. From around June 2008, continuing to exchange daily SMS messages with the student including:
 - i. About daily matters such as:
 - o What the student had done during the day, such as fishing, getting wood or hurting herself.
 - o Athletics and sport.
 - o The student babysitting her relative's children.
 - o The things she did when she was little with her relatives.
 - o Books, music, food, movies and cooking.
 - o Word meanings, including what certain words meant in subject 1.
 - o The student's prospects in relation to getting a job.
 - o The student's sadness about her relative/s being killed.
 - o School subjects and events the student liked or disliked.
 - o The student's feelings of isolation and exclusion from her friends, for instance because she had been ditched by them after attempting to arrange going to the movies.
 - o A continuation of the type of dialogue he and the student were having at school during school hours.
 - o To discuss and compare their respective days at school.
 - ii. A poem, which referred to the way the student stands with her hand on her hip and/or that he loves her really long eyelashes.

- iii. After student 3 had seen him at McDonald's with his family, containing words to the effect of, 'don't get the wrong idea; I was with my wife taking the kids out to make it easier for them because (my wife) wants me to tell them I won't be living with them any more.'
 - c. From around 22 July 2008 (having received a formal warning from the school in relation to his contact with the student), continuing to exchange SMS messages with the student including:
 - i. For the purpose of supporting the student.
 - ii. For the purpose of receiving support from the student.
 - iii. In reply to the student text messaging him that she was 'sad and worried,' 'wanted to curl up and die' and 'wanted to fall asleep and never wake up.'
 - iv. To let the student know if she ever needed to talk about anything, that he would listen.
 - d. From around 31 July 2008 (following being placed on leave from the school as a result of his contact with the student), continuing to exchange SMS messages with the student including:
 - i. Telling the student that it would be extremely unlikely that he would return to the school.
 - ii. To discuss topics unrelated to what had occurred at the school.
 - iii. About the student receiving bullying comments from people at school and how this affected the student.
 - iv. To receive emotional support and/or stability from the student.
 - v. To provide emotional support to the student.
 - vi. In around October 2008, containing words to the effect of 'when we get married, student 3's going to be the Minister.'
 - vii. On or around 23 October 2008, to tell the student that their communication should end.

1.2 Engaging in telephone conversations with the student for reasons unrelated to her education including:

- a. On or around Saturday 3 May 2008, from around 10.00pm spoke to the Student via his home telephone including about:
 - i. How to fix his Ipod.
 - ii. Her sport 1 match.
- b. From around 31 July 2008 (following being placed on leave from the school as a result of his contact with the student), continuing to engage in telephone exchanges with the student including:
 - i. For the purpose of distracting him from what had occurred at the school and to keep him stable during a time of huge uncertainty.
 - ii. On or around 23 August 2008, while she was at a friend's birthday party.

- 1.3 Removing the student from classes at the school for the purpose of discussing non-urgent matters with her including:
- a. In or around early May 2008, from her subject 2 class, to ask the student never to call him at home again.
 - b. During term 2 of 2008, from her subject 3 class, to discuss:
 - i. The student's behaviour in his subject 4 class; and
 - ii. What he and the student's parents had discussed during parent teacher interviews.
 - c. During term 2 of 2008, from her subject 1 class, to ensure the student would be present for House Assembly following the athletics carnival, so that her achievements could be recognised.
 - d. During term 2 of 2008, from her subject 5 class:
 - i. To discuss the student's behaviour in subject 6 and subject 1 class.
 - ii. To discuss the idea of the student going to school 3
 - iii. At the request of the student, for the purpose of allowing the student to leave the class.

The Panel heard opening statements from Counsel Assisting and the teacher who represented himself. The teacher acknowledged the Hearing had been postponed, based on a request that he had made earlier in the year. He also confirmed that the student was 14, turning 15 in early June of 2008. The teacher also indicated that he wanted the Panel to be mindful of how the word "relationship" was used in evidence as he believed it inferred things it should not. The Teacher was given encouragement and several opportunities to put forward all/any other relevant facts or admissions he wished the Panel to consider, prior to concluding his opening statements.

The Panel was of the firm view that the principles of natural justice had been adhered to and that the preparation for the Hearing had been appropriate and timely, with the teacher receiving all of the relevant materials. Additional material submitted at the Hearing was appropriately sighted by all.

The teacher requested the Hearing be closed and that all names, including his own name, be "suppressed forever". The teacher added that if the Hearing was not going to be closed by the Panel, that all the names raised throughout proceedings be suppressed. When asked, the teacher informed the Panel that he had not sought any specific legal or union advice in relation to having a Hearing closed. Additionally he indicated that he had not personally reviewed any past Victorian Institute of Teaching Hearing determinations (publically available) in order to gain an understanding of when and why a Panel granted or denied a request that a Hearing be closed.

The teacher argued that it would be embarrassing for his family who work and were educated in the regional community of 10,000 people, if his name was made public. He also specifically stated that he cared for the welfare of students and hence did not want the Student's name to be made public. He stated there was already some knowledge in the community about the allegations, and he feared that people would ask questions of

his family members (including minors). When asked specifically, he answered that he was not aware of any job related detriment or bullying/harassment suffered by his family thus far, due to existing public knowledge/rumour. He said that he and his family had suffered a degree of embarrassment and discomfort. The teacher stated that he was concerned that people would continue to ask questions about why he had left his teaching role, and would hence appreciate that the Hearing be closed. The teacher also stated that as a professional educator he tried to look after the welfare of students, so to have the proceedings open in his view, could amount to hardship and embarrassment for the student witnesses appearing for the Institute, which he was concerned about.

Having adjourned to discuss the teacher's request for a closed Hearing and/or the suppression of all/any names, the Panel determined that the Hearing would remain open and that an order to suppress names would not be granted at the point of commencement. It was noted that during proceedings the Hearing could be closed if the Panel deemed it appropriate at any stage, and additionally names could be suppressed throughout or at the end of proceedings, if the Panel considered it appropriate. The Teacher was reminded that while his name would be made public, the sanitised version of the determination placed on the Victorian Institute of Teaching website would not name the school or student witnesses. The Panel acknowledged that while the matters at hand may be embarrassing for him and his family, that the argument put by the Teacher was of insufficient weight, and fell short of the reasoning required to close a Hearing or to suppress names.

The Panel noted that the teacher had made some admissions during the Institute's investigation which reduced the need for witnesses and information to be presented during the two day Hearing. However the Panel also considered it important to note up front that during the Hearing, while under oath, the teacher admitted to lying to the Institute investigator about when he was texting the student. The teacher stated that he had lied about the actual timeframe in a purposeful way in order to ensure specific information was concealed from his wife. When questioned directly he explained that he had for some time wanted a new mobile phone but his wife did not agree to the purchase. He said his existing mobile phone then went missing for 4 to 6 weeks at which time he again discussed the purchase of a new mobile phone with his wife, but she would still not agree to the purchase. She did however state, according to the teacher, that if the phone was still missing when the holidays started (28 June to 13 July 2008) that a new phone could be purchased. The teacher indicated that he resented this as he wanted a new mobile phone immediately. The teacher stated that sometime before the holidays he found his missing mobile phone, but he chose not to inform his wife, as he still wanted the new one. Having found his old mobile phone the teacher used it to text the student during the weeks before the holidays (i.e. the period of time that his wife believed the mobile phone was lost). The teacher, wanting to conceal that he went ahead with the purchase of the new phone, despite having found the old one, lied to the Institute investigator on 12 November 2008, when detailing the timeframes when he had been texting the student.

With reference to these circumstances the Panel noted that the teacher, as far back as 17 July 2008, must have lied about the timeframes when he was texting the student. In evidence provided by the principal, it shows that the teacher had told the principal the

same story about his mobile phone being lost for 4 to 6 weeks (during which time there was no texting) and restarting text interaction with the student at the beginning of the holidays. When interviewed by the principal in July and the Institute investigator in November, the teacher did not deny texting the student, rather he made a decision to lie about the timeframe to conceal information from his wife.

The teacher told the Panel that his priority issue and main concern, despite the seriousness of the matters being investigated, was to conceal from his wife the fact that he had been dishonest about finding his old mobile phone. The Panel noted that the teacher had the opportunity to be honest with the Institute investigator, some 4 months after his earlier interview with the principal, having had time to reflect, but failed to do so. Additionally the Panel noted that the teacher did not during his opening submission seek to correct the evidence related to texting timeframes. The truth, and the teacher's justification for lying, emerged when the teacher was being cross examined.

The teacher inferred he knew he should not have lied during the investigation. Yet it was of considerable concern to the Panel that it remained unconvinced that the teacher legitimately viewed the serious nature of the matters investigated as being superior to the need to conceal information about a mobile phone from his wife. The teacher indicated that as the Panel did not know his wife they would not understand why he had placed more importance on covering up being deceitful. The Panel formed the view by the end of the Hearing that the teacher still felt his home situation and the alleged nature of his wife justified lying about the texting timeframe. The Panel, in relation to these specific circumstances discussed the maturity, integrity and professional judgement of the teacher. The Panel deemed his behaviour and reasons as unjustifiable. During the latter stages of the Hearing the timeframe associated with the teacher's texting was corrected.

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

- The principal
- Teacher 1
- Student 3
- Student 1
- Student 2

The principal

A teacher for 21 years, and a principal for several, the principal, having made a minor amendment to his written statement, confirmed that the remainder of his statement dated 21 October, and signed 30 October 2008, and its written attachments, were true and correct.

In late Term 2 of 2008 the principal was advised by teacher 1 that a neighbouring secondary school had heard rumours about a Year 9 student and a teacher at the school. The teacher was the teacher. The principal instructed teacher 1 to speak to the teacher about the rumours. He stated that she did so and gave a friendly warning, mindful that they were only talking about rumours. When talking to the principal afterwards she said that she was concerned by the teacher's reaction. Teacher 1 indicated that the

conversation made the teacher nervous. There was a conversation about the teacher's well-being, given that the principal was told that he was under a lot of pressure related to workload. The teacher was given a day off before the June 2008 long weekend.

The principal said he was also contacted by a local policeman (the parent of a student) who had heard the rumours. He indicated that a conversation had taken place with the teacher.

The principal stated that on 17 July 2008 he received a memo from teacher 1 indicating that three Year 9 students (student 3, student 1 and student 2) had spoken to her about an inappropriate relationship between their friend, the student and the teacher. The students said that their friend had told them that she met the teacher outside of school hours on the oval, and they indicated that they believed that a number of inappropriate conversations and incidents had occurred.

The Panel viewed the two page memo from teacher 1 to the principal. It stated that the three Year 9 students believed a range of things had happened including

- inappropriate behaviour for 2 to 3 months
- the teacher took their friend out of class often
- the teacher told their friend he had a crush on her/wanted to leave his wife for her
- there was a 'love-rock' in the teacher's office and it was a symbol between them
- the teacher wrote a poem that one of the girls stated she had viewed in part
- they met on the oval where they kissed and he put his hands in her back pockets
- the teacher said he was going to break up with his wife before the next holidays
- their friend was planning to be with the teacher after Year 12
- their friend had asked 'how's your sex life' and the teacher said 'no good because I don't want to cheat on you'
- the teacher ignored their friend's bad behaviour in subject 4 and they exchanged looks in subject 4 class
- the teacher told the student that he wished they could go down the street holding hands, but we can't

The memo also stated that the three girls were worried about their friend who had made comments like "*this is too hard*" and further that they did not believe that their friend was just fantasising. They said that they had warned her to stop what was happening as it could ruin the teacher's career, but they believed that she was enjoying the attention. They said their friend phoned the teacher, asking him to return the call, and that the teacher had changed mobile phones to get cheaper texts.

The principal stated that he met with teacher 1 and the three students, later that day. He stated that the students told him personally what their friend had told them about her involvement with the teacher, but none of them had witnessed any incidents themselves. However student 3 did state that she had seen part of a poem that the teacher had sent

the student via text message. The principal said that he delved into what the girls said that they had been told by the student, and ultimately believed that the conversations had taken place. They stated that their friend had shared information in the first subject 7 class after the June/July holidays, and also before the holidays. He stated that he believed that the girls were concerned their friend was getting herself deeper into a relationship that would sour, and they were also concerned for the teacher whom they respected. The principal said the students confirmed with him all of the details that they had provided to teacher 1. He said the girls were told to be discreet.

The principal met with the student's mother. Teacher 1 was also present. The mother was very upset that there was an allegation about her daughter and the teacher, as she respected him. The mother did say that she thought it would be the teacher, as her daughter talked about him incessantly. She noted that her daughter would come home excited if she had met with the teacher at the local parklands. She also said she had seen a lot of text messages from someone listed as "J" on her daughter's phone. She confirmed her daughter texted a lot and had been a different person over the last couple of months.

The student was interviewed by the principal with her mother and teacher 1 present. She said the teacher was a "friend" but she was not in a "relationship" with him. She said that there had been phone calls and regular text messaging between them – but mainly texting which peaked in volume over the June/July holidays. She confirmed she used the pseudonym "J" for the teacher and sometimes there were several texts a day. She said that they had met at the oval a few times. She indicated some meetings were organised, and some weren't; she'd just see him when he was on a run or walking the dog. She said that they had embraced, and that he had put his arms around her with his hands in her back pockets. When told that there had been a rumour of them kissing the student stated "no, nearly, but no." When asked why she had told friends that this had happened she replied that she "didn't know". The student confirmed that she had been crying during subject 5 after the teacher had seen her during school hours. She said she had freaked out in front of her friends due to a welling up of emotions. She added that she was confused and there was a whole range of issues. She stated that the thing that had tipped her over the edge was that the teacher had made a comment that indicated that he had feelings for her. The student stated that the teacher did not tell her that he had a crush on her, but there was innuendo. She said that at the time she was not upset, rather she had an emotional outburst.

The principal stated that the student became agitated during the meeting and declared that the teacher was her "best friend" and that she didn't like the word relationship being used. She also confirmed that the teacher had discussed his sex life with her. When asked if they had discussed the future, she said that the teacher had indicated that maybe over time when there was a possibility of them getting together, that the student's feelings for him would more than likely have changed. She said that he had commented that it may wreck his career.

The student confirmed going to the teacher's office, often with friends, at lunchtime to talk. She said that she enjoyed the teacher's company but her friends stopped going and the visits then reduced in number. In relation to being removed from class, the student indicated that she felt that it was in keeping with the teacher's role as Head of House to

remove her when he did. The principal noted that a teacher with a key role did remove students from class to address behaviour and to prepare for events, and that the student's removal from class may have been legitimate. He added that teachers could also catch up with students at lunchtime. When questioned by the teacher, the principal stated that as he understood it from speaking with the student's friends, the student had informed the teacher that subject 5 was boring and later during subject 5 she was removed from class by the teacher and that in his view that the situation probably didn't have the legitimacy that it should have.

Based on information he had from the teacher himself and the student's friends, the principal stated that he believed that texting had started in the first week of May 2008.

After hearing positions put by the student, and her parents, the decision to leave the student in the teacher's class was made. It was determined that there was no immediate physical danger and the parents requested she stay in the teacher's class as she was learning extremely well and they didn't want that disrupted. Further it was felt that by removing the student, the rumours would be fuelled.

When the principal met with the teacher and teacher 1 on 17 July 2008 he said that the teacher was nervous, but also angry about some of the allegations. The teacher agreed that he had spoken to the student on the phone and sent her text messages. He firmly denied any inappropriate physical or personal contact with the student. There was a sense of remorse according to the principal. The teacher stated that he had been having difficulty with his wife, and had wanted someone to talk to, so he spoke with the student. The principal stated that the teacher viewed what had happened as infatuation on the student's behalf - not a relationship. The teacher indicated that he knew that the student had a crush on him. He said he was fearful of reprisals if he stopped texting her. The teacher said that the rock in his office had no significance or meaning. The teacher stated that he had removed the student from class on four occasions, all of which were legitimate. He said that things started when on a Saturday night his phone rang several times, and it was the student. There was a follow up conversation with her about an Ipod, and then there was conversation about holidays. The teacher claimed he cut off the conversation, but the student rang back asking why he wouldn't phone her back noting that she thought he was her friend. The teacher said some texting then took place that evening.

The teacher denied when talking to the principal on 17 July, that the texting had been going on for some time before the holidays, stating that he had no mobile phone until the beginning of the holidays, as he had lost his phone for 4 to 6 weeks. When asked had he sent texts to the student, the teacher replied "*yes - too often*" noting it was in the June/July holidays and Term 3. When asked why, the teacher told the principal that he knew that the student had a crush on him, and he was scared that given he had already texted her, if he stopped she may tell school leadership. The teacher stated that he did not discuss leaving his wife with the student, and also denied the existence of a poem.

The principal said the teacher indicated that there were 4 meetings outside of school with the student and each was accidental, and that the student had a friend with her. He said that the teacher denied kissing the student, denied cuddling or embracing the student,

and had no reaction when it was raised that the student had been crying after seeing him. The principal stated that he discussed the Victorian Institute of Teaching Code of Conduct with the teacher, noting that it was obvious that his behaviour was wrong. The teacher's response was that he felt that once he had sent texts to the student, that she might become vindictive if he stopped, so he continued to text her.

The principal stated that on 22 July 2008 he contacted the Victorian Institute of Teaching and the employer. He then wrote to the teacher issuing him a formal warning, and in addition requested a written response to the allegations. The principal received the teacher's written responses soon after. They were viewed by the Panel.

In relation to texting, the teacher wrote

- *the student and I text several times a day during a proportion of the holidays ...the texts were of a conversational nature ... she felt isolated by friends who cancelled plans*
- *I communicated with the student as I felt lonely and despondent, and just wanted someone to speak to after not having been spoken to for a number of days on end at home, and with no friends or family readily available. These emotions were a culmination of having marriage difficulty...*
- *Having read the VIT Code of Conduct early Term 3 and noting that text conversations without a valid reason breach the Code ... such texting ceased.*

In relation to the meetings, the teacher wrote

- *I have visited the oval over 500 times over 9 years ... and approximately 80-100 times this year ... it would not be difficult for anybody to arrange themselves to see me at the oval because I am there at a similar time and so frequently. I saw the student at the oval 4 times and we had a brief chat. On at least 2 occasions she had friends or family with her, and she said she was watching netball training.*
- *I have no idea how many times the student would have seen me at the oval because I rarely wear my glasses... on one occasion during Term 2 the student and a friend snuck up on me and hid behind trees for a period of time to watch me run before revealing themselves.*

In relation to removing the student from class the teacher wrote, the 4 times I removed the student from class this year (Terms 1 & 2) were

- *From subject 3 to discuss her inappropriate behaviour in my subject 4 class ... here I also talked about what her parents and I had talked about in parent and teacher interviews*
- *From subject 1 to ensure that she would be present for House Assembly after the Athletics Carnival as she was to be recognised for her achievements*
- *From subject 5 to discuss her distracting behaviour in subject 6 and subject 1 classes, and to discuss with her that her parents were considering sending her to another school*
- *From subject 2 to inform her that she must never call me at home again.*

In relation to telephone calls, the teacher wrote,

- *Friday night, 2 March [MAY?], I received 2 phone calls where no-one spoke and just hung up*

- *Saturday 10.25pm, 3 March [MAY?],*
 - *1st call, no-one there, and they hung up*
 - *2nd call, no-one there, and they hung up*
 - *3rd call, I heard a faint 'the teacher' in a voice I didn't recognise. I said 'hello' then they hung up*
 - *4th call, I said 'hello who is this' and heard 2 voices and the Student identified herself. I asked her what she was doing and she asked me to call her back and hung up. I did not return the call.*
 - *5th call, I said hello and the student asked me to call back as she was out of credit. To make sure she was not in danger I asked where she was. She said camping in the backyard and to call back. I said it wasn't a good idea and I couldn't. She became agitated and said 'what are you doing? I just want to talk' and hung up. I was becoming very nervous about the developing situation*
 - *6th call, I said hello, and she said 'just call me back, I'm out of credit' trying to calm her down I asked 'what do you want to talk about. She replied 'how to fix your Ipod and sport 1' I said I'd prefer to talk face to face. Agitated she said 'great - I thought you were supposed to be my friend. You hate me now, don't you' and hung up. Not knowing if she was under the influence of drugs or alcohol, or if she would self-harm, which I did not want on my conscience, I thought that if I just called she would leave me alone.*
 - *7th call, I said hello and she apologised for cutting me off accidentally and asked me to call back. I got her number.*
- *I rang the student who answered sounding calm. She told me about deleting on-the-go menus and winning the Under 15's sport 1 game, then playing in the women's and an injured arm. I said I'd talk to her Monday. The call lasted 30 seconds.*
- *I called her back because she had become agitated and spiteful in her demeanour and voice ... I had not seen or heard this behaviour before ... I was not sure if she would harm herself because I had refused to call her back. I tried to calm and diffuse her anger without just dropping her off/leaving her in the lurch or leaving her feeling rejected. I was also concerned she may feel foolish and embarrassed, which could lead to self harming. I made the call because I was aware of what she wanted to talk about and would stick to that. I made sure that she knew the call would be quick and I tried to end the call firmly, but enabling her to not feel rejected. I did not want the possibility of her self harming herself on my conscience for the rest of my life.*
- *The following Monday (5 March [MAY] 2008) I spoke with the student for 10 minutes outside of her subject 2 class. I explained how inappropriate it was and said don't ever call me at home. The student apologised and said it would never happen again.*

In relation to the physical contact, the teacher wrote,

- *I believe this thought may have stemmed from an innocuous incident that occurred in full daylight view ... we were competing for a soccer ball and collided and grabbed each other for balance to stop ourselves falling, before immediately separating.*

In relation to the poem, the teacher wrote,

- *I did not write the student a poem.*

The principal noted that he had on-going contact with the employer who originally advised that the teacher should be placed on leave without pay for three days while the

issues were being reviewed. Further contact resulted in the principal being informed by a senior officer with the employer that a formal warning had previously been issued to the teacher when employed at school 1, and hence there was particular concern about the current behaviour in question, given that there had been a previous warning. They alluded to a pattern of behaviour that the principal said he started to comprehend.

A meeting was arranged with the teacher on 30 July. The principal and the senior officer from the employer attended. The school 1 warning was raised, and the teacher told the principal that they had been past errors of judgement. Concerns were also raised about some of his written responses, and his personal reasons for interacting with the student were pointed out as a specific example of concern. The principal stated that the teacher said very little in the meeting. Allowed to collect what he needed from his office, the teacher then left the school. The teacher was advised to seek union advice.

The principal wrote to the teacher on 31 July 2008, confirming that the teacher had wished to progress their meeting without an advocate present. The principal also detailed that after the meeting there remained significant and serious questions in need of answers. The teacher was informed that the matter was being referred to the Victorian Institute of Teaching and that he would be suspended until further notice. The teacher was also instructed in writing to refrain from all contact with the student and her family. The teacher tendered his resignation on 22 August 2008.

The principal said that he informed the student's parents that an investigation was taking place and they indicated that they would not want to take part. They felt the issue had been blown out of proportion and noted that they respected the teacher, and didn't want any further action.

The principal added that on reflection he believed that at the time that he met with the student, she knew what had been taking place should not have been happening. He stated that he felt the school had acted before the situation advanced, mindful of where things might be heading.

The principal said he would be very concerned if students and teachers sent texts in the early hours of the morning on a school day, adding that the pastoral care role of a teacher at the school extended to ensuring that students were doing homework, sleeping properly, keeping normal hours and having organised structure in their lives. He said the school expected parents and teachers to monitor student activity in a manner that had the student's best interests at heart.

The principal stated that the teacher was highly regarded and his record was exemplary. He said that he originally leaned towards defending the teacher thinking that the teacher had made a bad error in judgement. This position altered when alerted by the employer that there had been previous warnings about behaviour, and further when some of the questions he had posed remained unanswered. He considered that the teacher should be very clear about what was right and wrong, given past his experiences. The principal saw it as his responsibility to protect the student given that he couldn't guarantee that something more wasn't going to happen.

The principal raised with concern, that the teacher when at the school and on the day of the Hearing spoke about himself and the student as equals, and as people in equal positions, as if both had been spoken to in a disciplinary sense, by the school. The principal stated that the teacher was spoken to in a disciplinary way, but the interaction with the student was different, and of a supportive nature. The conversations with the student were about her feeling safe. The student was offered the services of the school Counsellor and open door access to teacher 1. Her mother made it clear that the texting must cease. The student didn't see that there was a problem and refused all support measures offered to her at the time. The principal added that the conversations with the teacher made it clear that he wouldn't be going on camp with the student after the initial three day suspension from the school. He was offered support, and also told that if he needed to meet with the student that he should always have someone with him.

The teacher returned to the school after a three day suspension and resumed work. After further meetings at the end of July he was suspended indefinitely, until the matter resolved. Staff were told he was on leave. Then the teacher resigned in late August. Staff were told that he had resigned; and no other directives were given by the school; however people were told to respect his privacy.

The principal said there may be rare occasions when sending a text message to a student could be acceptable, if directly school/sport related. He stated that he didn't think that the school had ever explicitly stated that there should be no texting, and there was no policy about it. He had no knowledge of related employer documentation that specifically related to texting. The principal indicated that he understood that texting was regular, and sometimes several times a day between the student and the teacher, but he did not know what time of day.

Teacher 1

A teacher for 35 years, teacher 1 stated that her written statement dated 23 October, and signed 30 October 2008, was true and correct. Having taught at the school for 20 years, she said she was currently the Director of Students which meant that she had responsibility for student management and discipline.

Teacher 1 stated that during Term 2 of 2008 she received a phone call at home from a teacher at the school, namely teacher 2. This teacher was also a parent at the school and the mother of student 1. She stated that her daughter's friend, the student, was being taken out of class frequently by the teacher, the House Coordinator. People were saying he was showing excessive interest in the student. Teacher 1 advised the principal and also spoke to the student.

Teacher 1 stated that the student had been removed from her own subject 8 class by the teacher. The student's friends had said that she was removed from subject 1 twice, and subject 5. Additionally the girls said the teacher seemed to favour her in his subject 4 classes by not treating her like the others, when she should have been disciplined.

When originally speaking to the principal, teacher 1 said that they both had thought it was likely to be the three girls misperceiving things, so they decided to keep it low key and agreed that she would speak to the teacher, and to the student. It was agreed that if

people were thinking such things that the teacher must be warned, and his actions could fix the matter quickly.

Teacher 1 spoke to the teacher noting that students perceived he frequently called the student out of class. She also said that there were rumours that he was showing too much interest in her. Told that this sort of thing didn't look good, the teacher seemed quite taken aback. He indicated that if people perceived such things then they had to be fixed. Teacher 1 said that she believed they saw eye to eye when the conversation ended and that her messages were clear. She expected the teacher to work to ensure the matter was resolved. Teacher 1 recalled the teacher being somewhat emotional, looking clammy and under stress, during the conversation. He said that he would make sure that such impressions were not given in the future. He added that the student was having boyfriend problems that he had discussed with her as part of his pastoral role as House Coordinator. She recalled the conversation happening several days before the June 2008 long weekend.

When cross examining teacher 1, the teacher asked if she recalled that there was a part of their conversation where a colleague with cancer was discussed, inferring that this was his reason for being emotional at the time. Teacher 1 stated that she did not recall any mention of the colleague who was unwell. Teacher 1 felt that by the end of the conversation the teacher understood what was expected of him, and knew it was his responsibility to ensure that any interaction with the student needed to be careful, with no reason for further poor perceptions. She said he was friendly with students and well liked by students and staff. He had in the view of teacher 1 demonstrated sound leadership of a House in need of attention, and had achieved a lot with the House and the students.

Teacher 1 said it was not uncommon for students to see teachers at lunchtime or recess when they were doing House business, particularly House Leaders. She added that managing student issues often took place during school time as students could not be kept in after school, so students would be removed from class, but in reality most students would never experience being removed.

Teacher 1 said that she had asked the student if the teacher was placing too much pressure on her by asking her to do extra tasks outside of class, for the House. Teacher 1 stated that at that time she believed the student was a House Leader, but later found out that she was mistaken. Teacher 1 recalled the student responding in an offhanded manner and seemed unconcerned.

Teacher 1 from the school said that the teacher had become tearful at a House Assembly in Term 2. There had been some thanking of people by the teacher, and then when sitting between the student and student 1, the teacher became tearful. Teacher 1 was friendly with the teacher, and concerned for his health, said he must be under pressure to become teary in public.

Teacher 1 spoke to the teacher the next day mindful that it was 'report writing' time. He said he was stressed about his reports, and under family pressure. She spoke to the

principal and an offer of an extra day off prior to the June long weekend was made, which the teacher accepted.

Teacher 1 recalled that at the end of Term 2 a local police officer rang and told her about gossip around town regarding a possible relationship between a student and a teacher from the school. Teacher 1 said that she told the police that she didn't think there was much truth to the rumours.

Teacher 1 said that after the holidays on 17 July 2008, three friends of the student, namely student 3, student 1 and student 2, spoke to her. They claimed the student had been meeting the teacher at the oval during Term 2 and was engaged in behaviour that concerned them. The discussion was detailed in a memo that teacher 1 sent to the principal that day. The three girls also stated that the student had written a note about the relationship to the teacher, and his wife had found it. Teacher 1 stated that she did not see the note, but the student did confirm writing one when she was later interviewed. Teacher 1 also stated that the student confirmed that the teacher put his arms around her and put his hands in her back pockets when interviewed in her presence. She said the student denied that there was a relationship, but said they had a friendship.

Teacher 1 also recalled having been told by the girls about a party attended by the student. It was stated that there was texting between the student and the teacher at the party. A girl from the neighbouring secondary school informed her teacher, who told the principal, and he rang the principal to alert him to the reported texting between the student and the teacher. The three girls accompanied by teacher 1 met with the principal. The girls went through the same information that they had shared with teacher 1.

A meeting was then arranged with the student's mother. Shocked, she said that her daughter did talk about the teacher a lot, and received lots of text messages, but she didn't know who they were from. The mother stated that the student went walking on the oval and got excited when the teacher was there. There was a further meeting attended by the student, her mother, teacher 1 and the principal. Teacher 1 stated that the student had an offhand casual attitude about the relationship between herself and the teacher, and failed to acknowledge the seriousness of the matter that was being raised, which concerned her. She stated that the student said things like "*what relationship*" but agreed that there had been texting and that they had met at the oval during the holidays accidentally. She said that there had been hugging and he had his hands in her pockets but no kissing. Teacher 1 said she believed the student had agreed that a poem had been written about her, and was sent.

Teacher 1 stated that she was present when the principal spoke to the teacher, and that she took notes. She recalled the teacher being shocked and stuck for words. She stated that he verbalised very little but there was lots of body movement, like shrugging and huffing. The teacher denied the kissing, he agreed there was texting, and he said that they had come into contact with each other in the holidays. He didn't say how he felt about the student.

Early in Term 3 teacher 1 stated that she was contacted by the police again and that she attended a meeting with the student and the police. The police made the student's rights

known to her and offered her counselling. The student said that she was fine and didn't need support.

Teacher 1 said the mother of one of the three girls, namely student 3, had informed her in August 2008 that her daughter had been at a party with the student, and that the student had received a phone call from the teacher on her mobile phone.

Student 3

Student 3 stated she turned 15 in June 2008 and was currently in Year 10 at the school in 2009. She stated her written statement of 21 October, signed 28 October 2008 was true and correct.

Student 3 said that the student had told her that she had phoned the teacher at home, when with a friend called "E". She had asked him to call back. She called a couple of times, and then he rang her back on her mobile, and they talked about fixing an Ipod. Student 3 confirmed the student's mobile phone number.

Student 3 said that the student had told her about a love-rock, detailing that one day when they were together she had the white crystal rock with her, dropped it down a hill, and the teacher insisted on retrieving it. Returning with the rock, the teacher made it their love-rock and he took it home. Student 3 stated that she saw the rock and it was like a crystal. She had seen it when the student had it in her pocket at school originally, before meeting up with the teacher. The next time she saw the rock it was on the teacher's desk, and another time she saw it in his drawer. She stated that she was certain it was the same rock that she had seen the student with.

Student 3 stated that she was in the teacher's office on one occasion with the student and student 2. The bell went and the student said *"oh no - I've got subject 5, can you please take me out, it's so boring"* and the teacher said something like *"I'll think about it."* During subject 5, which was being held inside, the teacher came and spoke to the teacher, and five minutes later the student left.

Student 3 stated that on one occasion the teacher had attempted to kiss the student, but she pulled away from him, according to what the student told her.

It was stated to student 3 by the student that she and the teacher had a special spot under the trees where they met. It was near the oval, and not too far from her house. Student 3 said that she believed that she was sent a text message from the student on one occasion when she was at the special spot with the teacher. Student 3 stated that she sent a return text message saying *"go home and stay away from him."* The student also stated that the teacher had embraced her and put his hands in her back pockets when hugging outside of school. Additionally the student told student 3 that she had expressed to the teacher that she would like to be close to him and fall asleep.

The student told student 3 that the teacher was going to break up with his wife before Christmas Holidays 2008. She also told student 3 that she had asked the teacher how his sex life was and he replied *"its no good because I don't want to cheat on you."* Student 3 also stated that the student told her that the teacher had said that he wished to wear a

mask of her boyfriend's face, so that he could walk around the school looking like the student's boyfriend.

Some lunch-times student 3 would go to the teacher's office with the student, but the student would ask her constantly to go to see the teacher. Most of the time student 3 and other friends said no, unless they were bored. She recalled the visits happened in Term 2 when the student would say "*I'm bored, lets go to the teacher's office*" and they would stay 5 to 10 minutes talking.

Student 3 said the student told her that she had written a note containing a series of questions about the relationship. The teacher took the note home and apparently his wife found it. Student 3 stated that she saw the actual note, but the student insisted on her not knowing the details within.

Student 3 recalled seeing the teacher at McDonald's with his wife and children. Student 3 was with a friend. The teacher saw her but didn't speak to her. Student 3 said that the student was sent a text message saying "*don't get the wrong idea, I was with my wife taking the kids out to make it easier for them because she wants me to tell them I won't be living with them any more.*" Student 3 said that the student told her that she had received this message from the teacher. The student read it out to student 3. Student 3 did not read the message herself.

On 17 July 2008 student 3 along with her friends, student 1 and student 2, discussed their concerns with teacher 1. Student 3 stated that the student had told her that the teacher said he had a crush on her, and the student had said that she liked the teacher. Student 3 stated that she had seen 7 or 8 text messages that the student said, the teacher had sent. One message was a poem of sorts containing a part that said that he liked the way she stood with her hand on her hip and her weight on one leg, leaning, and when she did so, her other knee popped out. Student 3 said she saw the message, and read it at the same time that the student was reading it out aloud. The message appeared to come from student 5. This was the name of a student in Year 9 who didn't have a mobile number at the time, which is why, according to student 3 that the student used the name in her phone when she stored the teacher's number.

On 23 August, when with the student was at a party, student 1 noted that the student was talking to the teacher on her mobile, just like friends talk, for quite a long time. Student 3 stated that she also talked to the teacher during the call, and she was sure it was him. Student 3 said the teacher said to her "*I don't know whether to kill you or thank you.*" Asking why he would want to kill her, the teacher told student 3 that he had lost his job because she had spoken to the principal. When asked why he was thankful he said he was no longer at the school and could be with and talk freely to the student without hassle. She said the student talked to the teacher for about 90 minutes.

Student 3 stated that the student informed her that one night when the teacher and the student were texting each other, the teacher told the student that he couldn't sleep. When asked why by the student, the teacher's reply text was "*Look in the mirror.*"

Student 3 stated that she was aware that the teacher was sending text messages to the student in early October 2008. She stated that she saw a text message that had been sent to the student that included words like *“when we get married, student 3’s going to be the Minister”*. Student 3 stated that she didn’t understand what was meant by the text, but the student did believe that she and the teacher would be together because he had told her that. The first week back in Term 4, student 3 experienced the student talking about the teacher a lot, as if he was her boyfriend. She noted that the student did not seem to feel *“awkward or weird”* about it at all.

Student 3 did not know when the student’s contact with the teacher ceased, but she was aware that the student had received a text message from him in February 2009, when he was fighting bushfires. She said that as far as she knew the student did not reply to that message.

Student 3 stated that the student kept the teacher’s number under different names, including student 5, which she had told student 3 she used for the teacher. Name 1 was another name. It was the student’s relative’s name, and she told student 3 she used it so that people wouldn’t get any ideas that she was texting the teacher.

Student 3 stated that her friendship with the student had faded in 2008 due to all that had gone on. Prior to that time, they had been best friends for about three terms. Student 3 stated that she had never had occasion not to believe anything she had been told by the student. She had never caught her lying and she viewed her as an honest person.

Student 1

Student 1 stated that she was 15 and in Year 10 at the school in 2009. She stated her written statement, dated 22 October, and signed 11 November 2008, was true and correct.

Student 1 was 14 in 2008, turning 15 in October 2008. A friend of the student, student 1 stated that she considered that the teacher treated the student differently. She noted that while she recalled the student being told to be quiet sometimes, the teacher seemed to favour her and she did not get into trouble the same way others did for talking loudly or laughing. She recalled being in 4 subject classes with the student, including subject 4 which was taught by the teacher.

Student 1 recalled the student being removed from class twice in subject 5, and twice in subject 1. She said that House Coordinators removed students from class sometimes. She noted that often the monitor came with the piece of paper to say that the person was needed, but the teacher came personally on the occasions that she knew about to get the student. She added that sometimes other teachers would come personally to remove students. Student 1 stated that she had not seen the student removed from class by anyone in 2009. She stated that the comparison she made about the student being removed from class more than others in the first half of 2008 was a comparison she had made in relation to herself and her other friends. Student 2 said that when the teacher removed the student it would be for half an hour and she’d return near the end of class. She added that sometimes other students would be gone for similar lengths of time when removed.

Student 1 said the student told her that she had rung the teacher at home one weekend, and asked him to call her back. When he did she talked to him about putting songs on the Ipod. She also claimed that the student told her that she and the teacher were sending text messages to each other; however she did not read any of them. Student 1 stated she was told they had been exchanging text messages by the student, a few weeks after it had started. Then 2 or 3 weeks later, the student said that she liked the teacher. This was before the student turned 15 and then at the student's 15th birthday party she talked about the situation as if her friends (i.e. student 3, student 1 and student 2) were aware. Student 1 recalled that they were sleeping outside in a tent, and someone said "*say who you like*" and as we went around the circle the student said she liked the teacher, or similar. "We thought it was strange because he was a teacher, but didn't say much as we didn't want to be mean to her." Student 1 said the student talked about the teacher a lot, and said he was cute several times.

In Term 2 the student would go to the teacher's office, sometimes by herself and sometimes with her friends. Student 1 recalled that when she went by herself she didn't usually come back to join them; she'd be gone for about 20 minutes from the middle of lunch to the end. She said that when she went with the student, and the teacher was not there, his door was locked. Student 1 stated there were a range of photos on the teacher's wall, including photos of the student and she was standing with her hand on her hip in the photos. Student 1 stated that anyone who was in the teacher's office could have viewed the photos.

Student 1 stated that one day when the student had gone to the teacher's office by herself, she returned crying and angry. "She snapped at us and was in an emotional state, and she was swearing. She wouldn't talk to us, she just kept saying that she was okay." The student didn't really say anything about what had happened for 2 days, then she said that the teacher had told her that he liked her, and that he said that he had a crush on her. According to student 1, the student shared that she had not thought that this was going to happen. She didn't say exactly why this made her upset, however Student 1 assumed it was all a shock and she was overwhelmed as she didn't think anything would come of her liking him. When calm she said that it wouldn't go anywhere. Student 1 also said that after that time she noticed that the student was a little more relaxed with the teacher compared to other teachers and would talk to him the same way that she would talk to her other friends. She added that she recalled this happening in Term 2.

Later in Term 2 the student told student 1 that she and the teacher were "dating" and student 2 stated that the word "dating" was used by the student. She said that they would meet at the oval, but she had not ever been there at the same time. She also stated that the Student had told her that they had kissed, but within a couple of minutes said she was just joking about kissing the teacher. Student 1 stated that she still didn't know if she believed her about joking or not. Student 1 said that the student told her that the teacher put his hands in the back pockets of her jeans, when they met at the oval.

Student 2 stated that the student had told her that the teacher picked up a rock and told the Student that it could be their love-rock. Student 1 believed that the student had told her about this the day after it had happened at the oval. She said she recalled being told by the student that she was carrying the rock and she threw it away, then the teacher

picked it up. He then put the rock on his desk at school. Student 1 said the student said that the teacher had written a poem about her, and sent it as a text message. The poem referred to the way the student stood with her hand on her hip.

Student 1 stated that the student told her that the teacher was going to leave his wife and that he loved her. The student also told student 2 that she had told the teacher that she didn't want to wreck his marriage, and that the teacher hated the fact that the student had a boyfriend. Student 1 said the student also told her that the teacher had said that he wished he could wear a mask that was of her boyfriend's face, so that he could look like her boyfriend.

Student 1 stated that she was very worried about her friend and knew what she was hearing about wasn't right. Accompanied by friends, student 1 told the student about their concerns, but she would not listen. On 17 July 2008 student 2 said that she and two friends, namely student 3 and student 2, spoke to teacher 1 as they believed that there was an inappropriate relationship between the student and the teacher.

When asked by the teacher, student 1 said that she was not aware of the student receiving any Birthday or Christmas presents from the teacher in 2008.

Student 1 stated that she recalled House Assembly and the teacher asking her and the student to sit on the couch. There had been some talk about their House winning the Sports carnival. The 'Champions' were acknowledged, then they were asked to sit on the couch. She recalled the teacher then talked about the 2 of them in front of everyone, and thanking them for helping him complete a run around the track. He said them running the last lap with him, had been important to him. Student 1 also remembered that the teacher had said that the 2 of them had helped him lose weight. The teacher had been a bit emotional. The teacher asked student 2 did she recall his physical appearance early in 2008. Student 1 answered "*not really.*"

Student 1 said students weren't supposed to have mobile phones with them at school, but did. She said that she saw the student with hers, and that she was aware the student was involved in texting a few messages a day during school hours. Student 1 stated that she believed that the teacher and the student were texting every afternoon. She added that other students also engaged in texting during school hours and it would not be seen as unusual for anyone to be texting.

Student 1 stated that she would go to bed about 9.30 pm at night on school days during Year 9 in 2008. She said if students stayed up late, or were partying on weekends and were tired at school, then teachers would talk to them about it. Teachers at the school had healthy lifestyle conversations with students.

When asked by the teacher, student 1 said that she had been removed from class herself three times in relation to the matter at hand, after going to teacher 1 in July 2008. She added that she had had several conversations with her parents about the matter also.

Student 1 stated that she considered the student to be an honest person and that she didn't believe that there was a time that she had ever lied to her. She stated that what had

happened had affected her friendship with the student for a while, but they were now friends again.

Student 2

Student 2 stated that she was 15 and in Year 10 at the school in 2009. She confirmed that her written statement of 22 October, signed 31 October 2008, was true and correct.

Student 2 turned 15 in July 2008. A friend of the student, student 3 stated that she and two friends, namely student 3 and student 1, spoke with teacher 1 on 17 July 2008 as they were concerned about the student, given that she had informed them that she had a crush on the teacher.

Student 2 stated that the student went to the teacher's office a lot and one day returned in tears as the teacher told her that he liked her. Student 2 said that the student seemed distressed. Student 2 stated that sometimes she went to the teacher's office with the student when the student had asked her to go. She didn't say specifically why she wanted to go she just said that she wanted to see him. The first few times student 2 went with the student, but then started to say no. Student 2 stated that she saw pictures of people on the wall in the teacher's office, but couldn't remember who was in them. She added that she personally saw two pictures on the teacher's computer, and her memory was that one photo was of the student and someone else in school sports clothes. The other photo had a few people in it. She stated that there were several computer files with photos, and these two photos were in a separate computer file. It was not a screen saver, rather it was a file that contained normal size photos. The teacher opened the file up and showed her and the student the photos when they were in his office.

Student 2 said that she wasn't in classes with the student, except subject 5. She said that others told her that the student was removed from other classes by the teacher.

Student 2 said that the student had told her that she had phoned the teacher one night from home, and asked him to call her back, which he did. She believed that they talked about putting music on an Ipod from what the student told her.

The student told student 2 that she met the teacher at the oval, and that he had kissed her once during Term 2. About a week later the student sort of changed her story and said "*oh, don't worry about that - it's nothing.*" Student 2 said that she personally thought there was a change in story because the student was telling her something that she shouldn't be talking about. Further the student told student 2 that the teacher had put his arms around her and his hands in the back pockets of her jeans. Student 2 stated that the student also informed her that the teacher sent text messages to her mobile, one of which was a poem. Student 2 stated that she did not see any of the text messages and she was not exactly sure what the poem was about.

Student 2 claimed the student told her about a rock they had together. The student told student 3 that the teacher had it in his office, and called it their love-rock. The student, according to student 2, carried the rock around one day and showed it to her in the car park. Student 2 did not know why the student had the rock with her that day, but the first time she saw the rock was on the teacher's desk in his office. It was a white crystal rock

and student 2 considered the rock the student had shown her and the rock she originally saw in the teacher's office to be very similar – “the same.”

Student 2 said the student told her that the teacher and his wife were getting a divorce, and that he and the student would be able to get together after she was 18. Student 2 said that the student told her that the teacher had paid her compliments about her eyes and told her that he liked the way she stood with her hand on her hip. Further the student told student 2 that the teacher had said that the student's boyfriend was lucky and he wished that he could wear a mask of the boyfriend's face so that he could look like him and be with her.

While at a friend's party with the student in August 2008, student 2 stated that the student text messaged the teacher and he rang her back. Student 2 said she knew that it was the teacher that the student was speaking to as the student had her phone on loud speaker, and she recognised his voice. The student told student 2 they were still involved or words like 'still together'.

When asked by the teacher, student 2 stated that she had no knowledge of the teacher giving the student Birthday or Christmas presents in 2008, or any knowledge of Valentine's Day gifts or Valentine's Day contact with the student in 2009.

Student 2 stated that the student told her that she had been contacted by the teacher via text message while he was fighting the bushfires in February 2009.

Student 2 stated that she had been friends with the student for two and a half years, but she wasn't really friends with the student any more. She said that when they were friends they had stayed at each other's homes and they were close. She added that over that period she had never had any reason to think the student had lied or been dishonest, or manufactured a story. She said that she had trusted her. She noted that the events of 2008 affected the friendship. Student 2 stated she thought that what had taken place was disgusting and didn't want to be friends with someone who behaved in such a way. She added that her view of the teacher and the student had changed.

Student 2 noted that she believed that what had happened had affected several of the student's friendships and that the student had fewer friends now than she did have. Student 2 said that she had never seen the student upset and distressed in the way that she was, on the day that she had returned from the teacher's office. She said that the student was not a person who broke down, or got upset and cried, in her experience over the two and a half years of friendship.

Student 2 stated that she felt very uneasy about the student being so close to the teacher. She stated that she and her two friends told the student that she should not be getting involved in the way that she was, but the student said it was okay.

Student 2 said that while students are not supposed to have mobile phones with them at school, they do have them, and the student carried hers with her most of the time. Student 2 stated that teachers don't text students in Year 9 or 10 for any reason that she

could think of - *"it doesn't happen"*. If they need to make contact quickly they might email you on your school email address, or come and get you out of class.

The Teacher

The Panel heard evidence under oath from the teacher. Aged 37 at the time of the Hearing he was employed as a fire-fighter. He stated that he had worked during the Black Saturday fires in February 2009. In the late 1990s the teacher taught at TAFE for about 3 years, utilising his Agricultural Science degree. Prior to this he had been employed in the Victorian public service. In 2000 he completed his Bachelor of Education (4 years part-time) and once qualified to teach at both Primary and Secondary levels he started to teach in schools.

The teacher stated that he enjoyed fire-fighting. He noted that unlike teaching he didn't wake up with headaches, and didn't have to worry about being organised and prepared. He stated that there was less regular stress, compared to teaching. He said he didn't see himself going back to teaching full time for a few years, but would like to keep his options open and possibly do emergency relief teaching at either primary or secondary level – *"that would keep me content"*. He noted that he particularly enjoyed teaching Sport/Physical Education. However he was qualified to teach the subject 4 subjects, but had very little desire to walk back into an actual classroom.

The teacher taught for 3 years at school 1, commencing in 2001. He indicated that he had a permanent position there. In 2004 he applied for leave without pay for 12 months and accompanied his family overseas for 4 months. While away he applied for a role in a regional Christian school, and then taught there for the remainder of 2004 while on leave without pay from school 1. His leave without pay came to an end and he had a discussion with the principal of school 1 who indicated that he thought it best if he did not return in 2005. The teacher recalled being told that another staff member at school 1 had threatened to resign if he did return to the school, and so he was encouraged not to return. He resigned from school 1 at the end of 2004.

The teacher agreed that he had received a formal warning, confirmed in a letter from school 1 in 2003, due to his interaction with a young student on the weekend. He stated that he had taught the student in 2002 and that she was bright and interested. He had liaised to have her placed on an extension program. Her parents were thinking of moving her as she had been offered a scholarship to another school. She stayed, but the next year she had a different teacher and she seemed to lose interest in school and to be struggling, and unhappy. Her mother let the teacher know as he had a student welfare coordinator role. He said that the school and school/church community were 45 minutes from home, but he'd go to town some weekends, and to church to keep in touch. He said that he had some time release during school to do the welfare work – but not much - so he'd catch up on work at school when down on the weekends. Because the student was having trouble he was invited to visit her at her home on a Sunday by the mother. The student was in Year 4. The teacher said the mother indicated that the student probably wouldn't talk freely while she was around and suggested that they go for a walk in adjacent parkland. He said he tried to go through with her why she was unhappy, asked if there was anything he could do, and reassured her that she was a bright girl who could achieve a lot. Somebody, possibly another parent, saw them in the parkland, and it was raised on

Monday by the principal. The teacher stated that he understood from the conversation and a letter he received at the time, that being alone with the student in the circumstances was problematic, and that there should not be a friendship with a student. The teacher was told his actions were inappropriate and bordered on misconduct at the time.

The letter from the school 1 principal stated that this was not the first time the teacher had been warned. Discussing his teaching experiences at school 1, the teacher stated that he had learnt some lessons. He recalled being on a camp with a parent and a senior teacher. He was a first year teacher, about 30 years old. He stated that the senior teacher had told him to share a room with one particular student who was a bed wetter, so he could get the child up to go to the toilet. He said that there was no one else in the room, except himself and the child. He said that as a first year teacher he did as requested. He stated that he was then admonished for sleeping in the same room.

There was a further warning in relation to something that happened in his first year with a Year 5 student. Organising a concert, he asked a Grade 5 student who was a dancer to help with the production's dance routine. The Grade 5 student helped extensively and to thank her, he bought her a necklace. He also gave her a card and signed his first name rather than the teacher. He said this happened as he was signing other Christmas cards at the time with his first name. He stated that he thought the necklace was a 'girlie' thing to give, and didn't consider an academic/education related present such as a book, because he wanted to give her something personal. He said that he thought that a gift of jewellery would raise her self esteem. He said she was in need of such support as she seemed to have low self esteem, and used to walk around the school yard by herself and struggle when it came to fitting in. The student was about ten at the time, and he noted when asked, that he didn't think about what the student may actually think about receiving such a gift, and that a present such as a book about dance didn't cross his mind. The teacher stated that he then learned that a concern had been raised by the mother when the child received his Thank-You gift. The principal had a conversation with the teacher and it was raised that what had taken place was inappropriate. He said he didn't recall the mother raising concerns about him showing favouritism towards her daughter in his class. He said that he found out later, in the material presented for the 2009 Hearing. The teacher stated that as the Student Welfare Coordinator at school 1, he didn't have specific qualifications; rather he learnt what was needed on the job. He said he was supported by some basic Professional Development (PD) covering specific topics like dealing with difficult students and boys' education. Discussion groups in school clusters took place on occasion where people discussed cases. He stated there was no PD related to 'boundaries' and no PD regarding the types of issues that welfare staff should be/should not be working with. He stated that if required he believed that he would enlist the involvement of others (psychologist/psychiatrist/principal/parent) as he was not trained.

The teacher stated that the student made several phone calls to him on the night of 3 May 2008 – a Saturday night – starting at 10.30pm, on the landline. There were a couple calls which he answered and no-one replied. He thought it was a prank. Then there were two voices. He stated that he recognised the student's voice, asked if it was it her, and she agreed. Then she requested he call her back. He stated that he didn't have her number at

the time. She called back, and he asked was she alright, where she was, and what she was doing. She rang again and became annoyed that he hadn't called her back, saying that she was almost out of credit and she just wanted to talk. He stated his mind was racing and he was nervous about what she may do if he didn't call her back. He stated that she may feel "*embarrassed or kind of rejected*" if he didn't call her back. He said he was concerned that she might harm herself if he didn't call back. When asked he stated that he had no reason to ever think that she might harm herself, and that there had been no history or even suggestion of such behaviour with respect to the student. The teacher agreed when asked, that at the time of the calls he knew the student was with a friend camping in the backyard. He also agreed that he had no reason to think anything was wrong.

After she rang again stating that she was nearly out of credit, he rang her back. He said he did it out of concern, but agreed at the Hearing that he had no information to be concerned about. His return call resulted in a non-urgent conversation about an Ipod and sport 1. He believed the student got his number from the phone book. The teacher said that in 2007 he'd asked students about putting "on-the-go" menu on his Ipod. The student was the one who knew how to do it, and did it for him. Then in 2008 he wanted to remove the menu, and asked the student for help. She tried to do it around April. She finally worked it out and this was the Ipod information shared over the phone.

The teacher stated that it hadn't crossed his mind that she may have had a crush on him, at that stage, or at any later stage. Nor did the student saying "*Great, you hate me now*" in the May phone call make him think that either. He said he just thought she was embarrassed as he didn't initially return the call. He stated that he called her back as he didn't want her self harming on his conscience. Confirming that the student stated "*I thought you were supposed to be my friend*" the teacher agreed that they had become friendly. He added that after the Athletics Carnival they spent a bit of school time together, and leading up to that she was involved in organising events; she ended up being the 'Champion'. He noted that the student also babysat his cousin's children. At the Hearing the teacher agreed that in May 2008 when she was 14 the student thought they were friends. He stated that she had started to visit his office in May and they had non-school related conversations. As House Coordinator he indicated that these conversations were justifiable as it was his role to help with student welfare from a pastoral perspective. This meant "*getting to know the kids better and talk about what they were doing personally, sport, events, family, just things that would tend to develop a rapport with them.*" At this stage he said he was more friendly with the student than most others, although there were a few students with whom he had similar personal conversations.

The teacher said he didn't report the Saturday phone calls to the principal or anyone else. Nor did he raise any concerns about the student's welfare. He agreed when asked, that it was reasonable to think that the student believed she had a special relationship with him.

The Monday after the phone calls the teacher removed the student from her subject 2 class and told her not to call him again, telling her that it could get them both into a lot of trouble. "*I thought that we'd developed a pretty good rapport with each other and I thought that might break down if this was brought up. I also thought that she was joking around ... I just thought she might get reprimanded in some way ... by the school and her parents.*" He

also stated *“I thought that I might get into trouble for doing this, mainly because of what had happened in the years previous.”*

The teacher informed the Panel that *“the philosophy I used a lot was to get kids to examine themselves independently – how they made choices and reacted to mistakes, and things that they might have, or could have done differently.”* The teacher added *“I guess I wanted her to understand how it might have been wrong, and get her to understand why it was wrong, rather than having other people tell her it was wrong, so that she could draw that conclusion herself.”* The student apologised for the out of school contact/phone calls on the previous Saturday night.

After some questioning the teacher agreed that he had told the Institute Investigator that texting between himself and the student started in the June/July holiday period, which was untrue. He stated that he used his old Virgin mobile phone for about 3 years until April 2008. It then went missing for 4 to 6 weeks. He was talking about getting a new phone in April, and wanted a new Telstra phone that was cheaper to use. His wife was not supportive of the idea. He raised it again when the Virgin phone went missing, but his wife again said no to a new phone, and told him to keep looking for it. She did agree that if it wasn't found he could get one in the June/July holidays. He admitted to the Panel that once he had found his Virgin phone a couple of weeks before the holidays started, he didn't tell his wife, and he started texting the student. He said he didn't tell his wife about finding the phone as she would not have agreed to him getting a new phone in the holidays.

He stated that he was texting the student for several weeks before the holidays when cross examined - the period of time that his wife thought the phone was missing. He agreed that he had lied to the investigator about the texting time-frames when interviewed in November 2008, so that his wife would not find out that he had lied about finding his old Virgin phone. He said that he thought that if he lied to the investigator, it would avoid him having to explain something else that he'd done, to his wife. The Panel noted that the evidence from the principal indicated that the teacher had originally lied when asked when the texting commenced. The interview notes taken in July 2008 by the principal housed the same inaccurate texting timeframe, provided to the Investigator in November 2008.

The teacher originally stated to the investigator that during the June/July 2008 holidays life at home had taken a turn severely for the worst. He had claimed that it was very stressful not being spoken to for 3 days by his wife, and he needed some friendly conversation not related to work. He told the investigator that he then retrieved the student's phone number from his landline phone bill and sent her a text asking her what she was up to in the holidays. When asked about this statement, given his admissions about the real texting/student contact timeframes, he said the scenario was the same, and he felt the same about his home-life, and his intent was the same – it just happened a few weeks earlier. He said things were bad at home before the holidays, but got worse in the holidays. He acquired the new phone in the June/July holidays.

It was noted that the teacher had originally stated to the investigator that his reason for starting to text the student was to talk about what she was doing in the holidays, not for

emotional support. The teacher then agreed his contact was not just about finding out what the student was doing.

Counsel Assisting asked the teacher the following questions, to which he answered “yes” to each –

1. *Did you appreciate that this was a serious investigation?*
2. *Did you appreciate the fact that it could affect your welfare and the welfare of the student?*
3. *Did you appreciate that it could affect your career?*
4. *Did you appreciate that it could be/was the foundation of Hearing proceedings?*
5. *Did you understand that the Investigator was engaged by the Institute of Teaching?*

Counsel Assisting then asked -

Did you appreciate your responsibility to cooperate as fully as possible and give truthful answers? The teacher answered “Well apart from that one.”

When asked if it occurred to him that concealing the truth, to cover up the fact that he got a new mobile phone when he didn’t need to, was an entirely inappropriate step, the teacher answered *“Well yes, but I had enough to talk to my wife about so it would have added another factor that I would have had to explain.”* When asked, he stated that he agreed that he was more concerned about the impact on his marriage than telling the authorities the truth. He stated that he had separated from his wife by November, but he still didn’t want her to find out that he had lied to her in June.

The teacher said that he got the student’s phone number from the phone bill in the filing folder. He stated that it was a spur of the moment decision, taking about five minutes to find the number. He said that he didn’t hesitate as he was angry about his wife and home situation, and at the time he was setting out for a walk. It was Sunday 15th June 2008 and he sent the student a text while he was on a walk. He said that he recalled the text being something like *“Try and guess who this is”* so it was anonymous. She guessed after two texts – *“I suppose I was playing a bit of a joke.”*

When asked the teacher stated that he was angry at his wife and did not think about the fact that he had removed the student from subject 2 and told her never to ring him again, after she had made calls to him, nor did he reflect on the fact that she had apologised and he was now contacting her, nor did he reflect on his stated philosophies about having students think about what they had done wrong, and could have done to avoid making mistakes. He said that he had just had enough of not being able to make his own decisions at home, especially when it came to going for a run or getting fit, given that that was all he’d wanted to do over the past few years. He stated that when he wanted to do such things he was made to feel guilty by his wife. The teacher stated that at the time he didn’t think about if the student could get into trouble, and he communicated with her via texts because he was angry with his wife.

He told the Panel that at the time he knew that the student would probably text him back, and agreed that was why he contacted her – to have a text conversation. He sent 15 text messages. He stated that he did not mention his wife, they were conversational texts and the content related to himself and the student. He stated that speaking to the student

gave him a positive experience - good feeling about going for a walk, rather than a negative experience, or guilty feeling which is what he experienced from home. The teacher said that he didn't have friends he wanted to text, and while he had friends and work colleagues *"they weren't the person I wanted to speak to at the time."* He stated that he wanted to speak to the student *"because we just got on well and I just wanted to talk to her."* He agreed that the fact that she was a student in his care meant nothing at the time, and was not an impediment to making the contact.

The teacher agreed that he had sent 50 texts to the student on Saturday 21 June, 48 on the Sunday 22 June and around 290 texts over one week. Prior to the holidays starting on 26 June some 66 texts were sent starting from after school to past midnight. He stated the texting was constant for about 8 or 9 hours. He agreed the pattern continued through the holidays, with some 70 texts being sent the first Monday of the holidays. He stated that they talked about music, books, sport, the school carnival, reading and netball. The teacher stated that there was at least a month where texting took place between them every day, and that this extended into Term 3.

When asked did he think during that time that maybe the student was infatuated with him, or had a crush on him, he said *"no"* to both scenarios. He stated that he did not know what the student told her friends, and she did not mention having any feelings for him. He stated that he did not think that she could have been infatuated with him because he was an overweight grumpy man who wore glasses and taught subject 4. He stated that he couldn't explain why the student told her friends that he hugged her, kissed her, had a love-rock and wrote a poem. During the Hearing, he said that after hearing all of the evidence *"I can't say that she developed a crush on me or not - I don't know."*

The teacher agreed that a responsible teacher would have turned his mind to the possibility of a 'crush' given what had transpired and that he'd failed in his responsibility to do so. Acknowledging that teenagers may form crushes on teachers, fantasise and could lack the maturity to understand their feelings he added that he never once thought about such things, in relation to the student. He agreed that he may have sent mixed messages, which could have been confusing.

The teacher recalled the student coming to his office at lunchtimes with friends, a couple of times, to chat. He said that the conversations about books, music, food and movies sometimes took place in his office at lunchtime. He stated that in addition to texting, his personal conversations with her also took place when watching school sports; however the actual texting covered many hours.

When asked was he attempting to extend the relationship beyond the friendship (which could be maintained at school) during non-school time, the teacher stated *"probably, it just developed I suppose. I didn't specifically go out to say I want to talk to her more and more and more - we just got on."* He added that he was surprised how much interaction there was when he looked at the phone records. He noted that he felt that when he was officially using his new phone, the texting decreased, as it was out in the open and it was hard to hide his text messaging.

While the teacher disagreed with some of the specifics relayed about his conversation with teacher 1, he did agree that he was told the student was being removed too often, and that he was told that he needed to be careful about perceptions. He agreed he had received a friendly warning and noted that the messages he took away were not to take students out of class too much, and be careful how he interacted with students. He agreed the conversations were before the long weekend in early June 2008. He said he really could not understand why people thought he was taking her out of class a lot. He said he also thought around that time, what if people knew about the texting, and he said to himself *"we're just talking, it's just - we're just having conversations... I tried to justify it to myself ... it's just that we talk."* He said that having had the conversation with teacher 1, that he did not reflect back on, or link the conversation to his previous warnings from school 1. Nor did he link texting the student regularly to his past warnings.

The teacher when asked, agreed that he had failed to apply to himself the same standards that he had applied to the student on 3 May 2008, when he removed her from the Subject 2 class.

He stated that he did talk to the student about boyfriends but not about his marriage difficulties. He agreed that there was a possibility that engaging in topics of conversation such as taste in movies, food, music and books could fuel personal feelings, and that such an exchange of personal information could create an interest and an attachment. He agreed that that was the sort of information that people exchanged on a date. He stated that it never occurred to him that such interaction could fuel the student's feelings, especially as he talked about his likes and dislikes with other students also. After questioning he agreed that the situation with the student was a different situation to other students.

The teacher provided evidence that he was overweight and had a goal of running 1500 metres, and when attempting to do so the student and her friends ran the last lap with him. This took place a few days before the Athletics Carnival in June. He stated that the student had initiated this help and support. By encouraging him to do that last lap, and actually running with him, they helped him break down a psychological barrier that he had experienced for 10 years. He stated that *"the girls had allowed me to get my life back, and for that I will always be grateful"* and talking about the student *"I shudder to think where my life would have been if she had not decided to get the others up and running."* The teacher stated that he still felt that if he had not run that last lap he would have given up forever. He offered up that he was now much fitter and much happier.

The teacher agreed that while this event was a huge thing for him, it was probably largely irrelevant to the girls, and his related public thank-you in front of all House students were probably out of proportion. He said that he still had an intense sense of gratitude because they had helped him do something that he couldn't do himself. When asked he stated that he wasn't able to afford personal trainers, or the gym, and that there weren't other friends that he wanted to exercise with.

The teacher stated that he found the student good to bounce ideas off, and noted that she was forthright with her views which he liked. He would seek her opinion on some administrative and House matters. He stated that he praised her, and that she became a

very good friend and a big support to him. The teacher elaborated saying that after the allegations had surfaced, and everyone seemed to distance themselves from him, he realised that the student had really become a good friend. He stated she was supportive and *“she was probably the only one I could still talk to.”* After the allegations surfaced the teacher stated that the nature of the interaction changed, with the conversation moving from that of friends to being supportive conversation. The student started to discuss how she felt about everything that was going on, and what was being said at school, and how it was affecting her.

The teacher stated that he did not write or send the student a poem. He said that he did not ever hear anyone else talk about how the student stood, although lots of people saw the pictures of students on his walls. He stated that he did comment on how she stood. The teacher stated that he didn't know the student stored his texts or had him listed under different names, nor had he spoken to her about it. On reflection he stated that she had probably done so as she didn't want people to know that they were texting. He stated that he was texting the student for about 3 weeks before he considered that her parents might disapprove and he knew it could mean trouble, but he still did not stop texting *“because I guess I was just enjoying the conversations that we had.”* He agreed when asked, that he didn't think beyond the sensation of enjoyment. He indicated it took him quite a while to comprehend that the rumours may have an impact on the student and her friends.

The teacher stated that he had seen the student's friend at McDonald's, but that he did not send a text message like the one described. He stated that he had told the student via text that he was going to McDonald's with his kids, before he went. He said that he did not use the words *“don't get the wrong idea.”* He said that they would text each other to say things like *‘I'm off to do X now’* during each day, after he stopped teaching at the school. He said that he recalled this visit to McDonald's was in late August/early September 2008.

The teacher stated that he had brought several white rocks back from overseas in 2004. They sat on his desk at school and sometimes he would use them in his Subject 4 classes. He stated that he did not lend them to anyone and that he never saw the student with one of his rocks. He could not explain how she could have been in possession of one.

The teacher stated that he felt that the texting probably wasn't acceptable when it was happening, but having read the Victorian Institute Code of Conduct in mid July 2008, it was clear that the texting was unacceptable. In his written responses to the principal he stated that he had ceased texting the student after reading the Code. The teacher admitted under oath that he only ceased texting for about 4 days (roughly the 17 to 22 July) and had started and was continuing to text up to his final meeting with the school principal. He stated that the former texting relationship, which was a friendship, then became supportive in nature. He said that the volume of texts was not as high. He added that the student sent texts that made him feel concerned about her welfare. He said *“I knew she would be feeling embarrassed, suffer teasing and blame, and was having to deal with the rumours....I thought I would just help her through the initial rough patch, and admit that helping her also helped me through the issue.”* The teacher said that the texting that took place after 22 July was for a valid reason, and therefore appropriate and not in

breach of the Code of Conduct. The valid reason was that he was worried about the student. Suspended indefinitely from 30 July, the texting continued after he left the school, and after he resigned in late August. The teacher stated that when he said in his written response that *“such texting ceased”* he meant that the conversational texting without a valid reason had ceased. He believed that there was a clear distinction between that texting, and the supportive texting which commenced 4 days later. When asked he agreed that the principal probably would not have made the same distinction, and would have thought that all texting had stopped. He also agreed that the letter from the principal (dated 31 July) said that while suspended and throughout the investigation *“you must refrain from all contact”* with the student and her family.

The teacher elaborated on things that the student allegedly texted him, that caused him concern during late July and after. He stated that he thought she was emotionally upset and struggling given what was going on at school. He stated that he did not share the information however, nor get her help of any type. He decided that he'd just listen to her speak about how she was feeling, and be there for her – a person she could talk to - and he thought that way she would just get through it. The teacher agreed that he had given evidence (talking about earlier experiences) that he would get a student help if he was out of his depth given that he was not trained in such areas. He agreed that he did not seek help for the student in any form. He did not talk to the school principal, her parents, or a counsellor, even though he indicated that he was very worried about her. He then stated that he didn't think she would really be thinking about doing anything to herself, but there may be a possibility. He indicated that it did not occur to him that he might not be the best person to be dealing with the issue, and what the Student was going through, and on reflection at the Hearing however, he admitted that was probably poor judgement on his part.

During further questioning, the teacher admitted that the texting ceased to be totally 'supportive texting' and resorted to a level of 'conversational texting' during his suspension and after his resignation. There was interaction about films, TV, books and music. He indicated that the student was pretty much the only person available for him to talk to, and he did so for personal emotional support, and it was not necessarily about the student's welfare. He stated that the student texted him to ask if he had left school for good. He responded it was unlikely he'd be coming back. She replied *“you'll be right”* and he stated that she then went on with *“some meaningless random conversation, which I actually enjoyed ... and that was the way that it continued”*. The teacher stated that the student would mention bullying comments that upset her, and he would listen to how such things affected her, until she moved onto more meaningless conversation. *“She gave me emotional support even though she didn't know she was providing it.”* He stated that she asked him to call her sometimes which he did, and sometimes she would call him. *“It was actually a relief to have an audible conversation with someone who didn't mention what had occurred at school or what was being said in the community. Comic relief was what she provided, and this kept me stable during this time of huge uncertainty. And I had to keep stable for my family.”*

The teacher stated that after resigning from the school in August 2008 he withdrew from family and social functions. He added that support from school colleagues dried up and he stopped playing football. He noted *“all the while her meaningless conversation kept me*

stable in an unstable environment.” He stated that he finally came to the conclusion that even though she probably was not aware of it, he was relying on her too much for support and “I was most likely hanging onto her contact as she was my last link with the school, which had been abruptly severed....”

The teacher said that he realised he needed to get back to a normal life, and also felt that it would emerge that they were still in contact. So he approached trusted friends and they told the student’s family and the school that there was still contact. The teacher then told the student that the texting had to stop. The teacher stated that the texting ceased around 24 October. He said that he was having marriage counselling in late October 2008.

Then in February 2009 the teacher again sent a text message to the student when in an emotional state. He said that he was tired and drained having been fighting the Black Saturday bushfires, and he again contacted the student by text, telling her what he was doing. It appears that the student did not reply. Asked if he had a dependency on the student for emotional support the teacher stated “*not now.*” He said he felt “*pretty ordinary*” after sending the text in February as “*it has been said time after time that I have not been able to make the right decision, and again I had a choice ... and I made the wrong decision I am now confident that I will make the right decisions ... I have spoken to my wife through all of this and I haven’t had the desire to speak to the student or rely on her for emotional support.*”

The teacher told the Panel he believed that if teaching in a stressful environment he would be able to maintain a level of self control. He stated that he didn’t believe that he would need emotional support from the student or other students, in the way that he had previously. The teacher said that he had not received any related counselling, and that it might be beneficial.

The teacher stated that he understood how he had affected the student’s life, friends and family. He felt that he had contributed a lot to what the student had gone through. He said that he may have harboured some feelings for the student even though he knew it wasn’t right. He agreed that he interacted with the student after fighting with his wife. When asked did he use the student as a buffer or a comfort he said that she was someone he could talk to and have a fluid text conversation with, and there wasn’t anyone else like that. He said he did so while aware that it had to be kept secret, and that there were risks for people.

The teacher stated that he had himself to blame for the series of events, noting that his decision to start texting the student set in train a series of events that could adversely affect his family, a school community and individuals. He said that he could see how his electronic conversations with the student were unrelated to her education, which meant that he had acted unprofessionally. He accepted at the end of being questioned that the student may have had a crush on him and that it may have been possible, even probable that his actions contributed to how the student felt.

The teacher presented a Thank-You letter received from a parent and a copy of the school newsletter which recorded his achievements with the House and students in 2008 (written after he had left the school). He said he believed he was thanked at a school

morning tea also after he had left. He stated that he was touched by such things and wanted them considered by the Panel.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

When reviewing the evidence and discussing Hearing proceedings the Panel agreed the teacher continued to see and comprehend all that had transpired with a particularly obtuse self focus. The position or 'shoes' from which he assessed all that happened, was obsessively his own. This was despite the period of time he had for reflection, prior to the Hearing. The Panel felt strongly that the teacher failed to sufficiently understand the damage to the reputation of his profession that he had caused. The Panel felt strongly that he had failed to sufficiently comprehend the real and potential psychological complexities associated with the establishment and development of his relationship with the student. The Panel felt strongly that the teacher fell well short of displaying appropriate levels of remorse in relation to the student, the friends of the student, and the school community. That said the teacher did express intense emotion in relation to his own personal situation, and how things had affected his relationship with his family, and how he had lost his social networks and employment.

The Panel concluded that the teacher had a lot of personal development work to do if he wished to teach again. At the time of the Hearing the teacher did not show in an informed way that psychologically, he actually understood what had happened, or why it had happened. Nor did he demonstrate to the Panel that he had a sound understanding of the exploitative and dangerous manner in which he literally used the student to service his own emotional needs, and supplement his dysfunctional home life. Despite professing to care for the Student, his blatant disregard for her as an adolescent, and his self motivated voluminous interaction, projected an alternative picture.

The Panel noted a pattern of deceitful behaviour and a series of excuses for his contact with the student that not only lacked perspective, but verged on the illogical and the ridiculous. The Panel were particularly concerned by the teacher's inability to link his previous warnings with the situation he created and fostered with the student. The Panel was most perturbed that he followed his swift warning to the student after she phoned him (for which he received an apology) by initiating his own anonymous contact with the student out of hours. He then continued inappropriate contact despite it being clear that he should not, due to conversations with teacher 1, the principal and several pieces of written correspondence. In addition he indicated that he had ceased contact – but had not. The Panel viewed his distinction in relation to non-valid texting and valid texting as absurd.

The Panel noted that it was when he decided that he needed to get his life back on track in late October 2008, the teacher made it known to the student's family and the school, via others, that he and the student were still in contact. He also told the student contact must cease. The scenario yet again appeared to be all about the teacher. Then once again, for personal reasons he initiated contact with the student when fighting the bushfires in February 2009; a date which fell after the point in time where notices for Hearing proceedings had already been served on him.

The Panel still questions and remains suspicious about the purpose for the February contact, and all other contact for that matter. It is acknowledged by the teacher that he used the student for emotional support, and as a way of escaping his normal life and family situations. However the Panel is not convinced that there were not other untoward and underlying intentions. That aside the Panel is of the view that all contact that the teacher engaged in had a clear role to play, when it came to propping himself up. The Panel considers that it was egocentric, calculated behaviour that he was happy, indeed enthusiastic to engage in, as it went some way to fulfilling the teacher's primary objective of feeling good about himself.

The Panel at the end of the Hearing held the view that the teacher still saw himself as a victim in some ways, although willing to admit that he had made some mistakes. Mindful that throughout the Hearing the Panel felt the need to remind the teacher several times "*this is not about you*" in the hope of gleaning some thoughtful commentary relating to how others may have been impacted, by the end of the Hearing the Panel remained unconvinced that the teacher could reflect in an appropriate and professionally objective manner about the real impact on others. The teacher abrogated blame, pointed to others for having spread rumours, indicated that things would have been better for all if the student's friends had been more discreet, and failed to articulate comprehensively that he himself was the reason for the distress experienced by every party that was impacted. He did however admit that he had himself to blame for what he had personally experienced.

Based on the balance of probabilities and all of the available evidence the Panel has found that the over arching allegation that the teacher engaged in inappropriate communication and/or contact with Year 9 student, the student, is substantiated. Further, it is found on the balance of probabilities and all of the available evidence that allegation 1.1 is proven, as the teacher did engage in SMS messaging via his mobile telephone for reasons unrelated to the student's education. Additionally the Panel found the following to be substantiated:

- Particular 1.1a, and examples i, ii, and iii
- Particular 1.1b, and examples i, ii, and iii (the Panel finds examples ii and iii to be substantiated mindful that the evidence is less direct)
- Particular 1.1c, and examples, i, ii, iii, and iv
- Particular 1.1d, and examples, i, ii, iii, iv, v, and vii (the Panel notes that that there is insufficient evidence to substantiate the exact content of example vi, but does believe a text message was sent)

It is found on the balance of probabilities and all of the available evidence that allegation 1.2 is proven, as the teacher did engage in telephone conversations for reasons unrelated to the Student's education. Additionally the Panel found the following to be substantiated:

- Particular 1.1a, and examples i, ii, and iii
- Particular 1.1b, and examples i, and ii

It is found on the balance of probabilities and all of the available evidence that allegation 1.3 is proven. The Panel believe that the teacher did remove the student from classes for the purposes of discussing non-urgent matters, as well as some matters that he should

not be raising in class time. Additionally the Panel found the following to be substantiated:

- Particular 1.1a
- Particular 1.1b, and examples i, and ii
- Particular 1.1c
- Particular 1.1d, and examples i, ii and iii

The teacher's behaviour amounted to serious misconduct. In making this decision the Panel considered *Kellam J in Parr v Nurses Board of Victoria* (VCAT, 2 DEC 1998) where His Honour observed "...the question of whether or not a nurse has engaged in unprofessional conduct of a serious nature must depend on the facts of each case. Clearly such conduct would not be serious if trivial, or of a momentary effect ... It must be a departure, in a substantial manner, from the standards which might reasonably be expected of a registered nurse. This departure from such standards must be blameworthy and deserving of more than passing censure."

Also noted in *Allison v General Medical Council*[1891-4] All ER 768 serious misconduct is said to encompass conduct "which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute."

Teachers hold powerful and influential positions in relation to students. Good character, sound judgement and sensitive astute decision making in relation to student care are essential qualities. They have the trust and respect of students, parents, colleagues and the community at large. To act in a manner that disregards and disassociates oneself from such things is of serious concern. In *Burgess v Board of Teacher Registration QLD*[2003] QDC 159, the District Court noted the importance of not impairing "the standards of a profession in which the community entrusts the immensely important task of educating young children and adolescents."

The Panel is of the view that the teacher is currently not fit to teach. Appropriate levels of personal insight and professional insight are seen to be currently lacking. Ethical integrity and the ability to differentiate between right and wrong, and act accordingly without hesitation, are essential. At this stage the Panel considers that while the teacher may be able to differentiate between right and wrong, the Panel is not convinced about the teacher's compunction to act. Limited demonstration of professional detachment was evidenced in relation to the student, and the worrying yet persistent projection that she was his equal in many ways, was viewed as problematic. Simplistic articulation of boundaries and insufficient levels of remorse, accompanied by the teacher's inept reflection on the deleterious impacts of teacher student relationships such as the one he orchestrated and fostered, dictated this decision. Further the Panel formed the view by the end of the Hearing that the teacher still felt his home situation and the alleged nature of his wife justified lying about the texting timeframe to the principal and the investigator. He acknowledged it was wrong, but indicated that he believed his actions were justifiable. The Panel disagreed and considered his judgement and lack of remorse to be untenable.

DETERMINATION UNDER SECTION 2.6.46(2) OF THE ACT

This is a decision that has been made in the public interest, it is not a punishment. Fitness has been assessed at the time of inquiry and currently the teacher is not seen to possess the qualities needed to discharge the duties of a responsible teacher (irrespective of whether the employment gained is full time or in the capacity of a relief teacher). The teacher needs to undertake an extensive amount of remedial work. He needs to be able to demonstrate a sound understanding of his persistent failure to act in an appropriate, ethical and professional manner.

The teacher's registration is suspended for a minimum of 12 months. The following conditions have been placed on the teacher and the conditions are to be met in full before the suspension of registration is removed.

Attend a series of 10 psychological sessions within the 12 month period. The psychologist is to be a person with expertise that covers educational settings and the professional standards expected of teachers.

Provide the psychologist with this Hearing report, in its entirety, prior to the sessions.

Provide a psychologist's report to the Institute at the end of the 10 sessions that discusses the teacher's progress/understanding with respect to each of the following areas that is to be covered in the sessions.

- Review of the teacher's flawed thinking and his exploitation of the student
- Sound reflection of the circumstances and consequences from the 'shoes' of affected parties
- Understanding adolescent mindsets and behavioural tendencies.
- Separating the 'personal' from the 'professional'
- Proper professional teacher - student relationships
- Establishing appropriate boundaries and identifying risks to boundaries
- The parameters accorded to student welfare and pastoral roles
- The mapping of personal strategies to avoid any future issues
- The Victorian Institute of Teaching Code of Ethics
- The Victorian Institute of Teaching Code of Conduct

The teacher is to complete his own report, after all sessions have concluded, identifying what he has learned and any additional reflections on what happened. The report must satisfy the Panel that the teacher has reflected on his conduct and developed strategies for managing his relationships with students appropriately. This report is to be provided following the 10 sessions with the psychologist, and should be forwarded at the same time as the psychologist's report.



SUSAN HALLIDAY, CHAIRPERSON



per:
ANNE FARRELLY, REGISTERED TEACHER



per:
NORM FARY, PANEL MEMBER