

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 091

REGISTERED TEACHER: Douglas Gavin ROLFE

PANEL MEMBERS: Jane O'Shannessy, Chairperson
Terry Hayes, Registered Teacher
Polly Flanagan, Registered Teacher

ATTENDANCE: The teacher attended the formal hearing and was self-represented
Mr Eugene White Counsel Assisting with Ms K Magnussen, instructing

DATE OF HEARING: 29 October 2009

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

On 6 November 2009 the Panel decided:

- to suspend the registration of the teacher for a period of six months from 17 November 2009
- to impose the following conditions on the teacher's registration:
 1. That the teacher must attend at least 3 sessions with a registered psychologist.
 2. That the teacher must authorise his treating psychologist to provide a report to the Victorian Institute of Teaching addressing the following areas:
 - i. differentiation between personal and professional relationships (adolescent / student and adult)
 - ii. development and maintenance of professional standards when working with young people

- iii. actively determining and implementing professional boundaries with individual students,
 - iv. making risk assessments of student's behaviour and informing the appropriate authorities
 - v. understanding the extent and nature of student, colleague, parental and community trust inherently invested in a teacher
 - vi. understanding and fully adhering to the Victorian Institute of Teaching Code of Ethics and Code of Conduct.
3. The suspension on the teacher's registration will not be lifted until the panel receives a report from the teacher's treating psychologist which satisfactorily addresses the areas set out in 2.

REASONS

BACKGROUND

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

By complaint form dated 8 December 2008, the student lodged a complaint with the Institute against the teacher regarding allegations of serious misconduct. The complaint was lodged in accordance with section 2.6.30 of the *Education and Training Reform Act 2006*.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 21 January 2009 and the Committee decided to refer the matter to an investigation.

On 22 July 2009, the Committee considered the investigator's report and decided to refer the matter to a formal hearing.

A Notice of Formal Hearing dated 10 September 2009 was served upon the teacher by registered post on 16 September 2009.

The following exhibits were accepted by the Panel:

- A.** The student Witness Statement
- C.** The principal of school 2 Witness Statement
- D.** Witness 1 Witness Statement
- E.** Witness 2 Witness Statement
- F.** The acting principal of school 4 Witness Statement
- G.** Record of Interview of the teacher and the Institute's Investigator

THE EVIDENCE

At the commencement of the hearing the teacher made application to the Panel that his name be suppressed because of the possible adverse publicity and the effects it might have on his two children who were still students at school 2. Counsel Assisting informed the Panel that he had no objection to the teacher's application. After deliberation the Panel determined that the application would be rejected because the administration of justice would not be prejudiced if the teacher was identified.

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

1. *In the period November 2007 to June 2008 whilst a registered teacher at school 1 and school 2 the teacher engaged in inappropriate contact of a personal nature with the student, including:*
 - (a) *Sending the student email messages and letters;*
 - (b) *Suggesting the student meet him at a shopping centre without the knowledge of her parents;*
 - (c) *Continuing communication with the student when she was no longer a student of school 1 or school 2.*

DISCUSSION OF THE EVIDENCE

In its discussion of the evidence presented the Panel focused on the following three aspects: the nature of the teacher's relationship with the student; the teacher's retrospective reflection on his behaviour; and the degree to which the teacher demonstrated a genuine understanding of the Institute's Code of Conduct and his responsibilities as a teacher.

Regarding the teacher's actions, the Panel believed that there was nothing sinister, furtively clandestine or sexually predatory in the teacher's behaviour. It accepted his explanation that he acted out of concern for the student's wellbeing, although it believed that the concern and compassion he expressed were compromised by inappropriate personal intimacies and religious proselytizing. The teacher might not have seen his discussions about religious matters as proselytizing but the student's father certainly thought that there were many examples in the emails where the teacher was "pushing religion".

The Panel also believed that the teacher displayed an extraordinary naiveté, even arrogance, in believing that he was the person best suited to counsel the student and, in failing to consider the consequences of his behaviour on an emotionally volatile, possibly dependent adolescent. In doing so he blurred the necessary distinctions a teacher must make between what is appropriate pastoral care on his part and his responsibility to inform those who are professionally qualified to engage in counselling in such circumstances, whatever he might feel about their inadequacies. His actions also failed to consider the responsibilities he had to inform the student's parents of her behaviour. This failure, in the opinion of the Panel, was compounded by the obvious distress caused to the student's parents. The concern they expressed about her wellbeing and the purposeful care they exercised once they were made aware of the facts gave the lie to any assumption on the teacher's part that "they were part of the problem" and that information about the student's state of mental health should be withheld from them, irrespective of what promises he may have made to the student about respecting her confidentiality.

The Panel believes that it was only in the flurry of activities surrounding the actions of the student on 19 December that the teacher finally accepted the possibility that he was “out of his depth” in dealing unilaterally with her situation. His inaction between forming an opinion on 13 December and finally taking the responsible course of action by informing her parents and the student counsellor was, on his own admission, entirely inappropriate. The Panel would suggest that it was not so much a matter of the teacher being “out of his depth” at this particular point in time; he should never have been in these particular waters in the first place. As he himself came to recognize his choice of actions was inappropriate, “even stupid in particular areas.”

The Panel considered it was to the teacher’s credit that, in retrospect, he accepted that he had “misjudged” matters in distinguishing between the role of teacher and the role of counsellor though he was aware that there were crucial differences in such roles, and was indeed out of his depth for much of the period of the relationship.

The Panel recognised that the teacher had gained some understanding of his behaviour in the light of his subsequent acquaintance with the Institute’s Code of Conduct. Certainly he was now able to see that keeping a “professional distance” meant more than avoiding inappropriate physical contact with students, and that it also entailed emotional and psychological connotations. However the Panel remained concerned that, in attempting to articulate his understanding of the Code of Conduct he tended to see the standards embodied in it more as a restraint or proscription on the kinds of behaviour he had engaged in rather than seeing them as expressing values of integrity, respect and responsibility which are intrinsic to the nature of the profession itself. The Code of Conduct is not a series of proscriptions imposed on teachers but an expression of the inherent professional boundaries in a teacher-student relationship where issues of power and vulnerabilities interact.

The teacher said he fully acknowledged that his communication with the student was inappropriate but he deeply regretted that his motivations for engaging in it were questioned and may have led to a sense of betrayal on the student’s part.

FINDINGS UNDER SECTION 2.6.46(1) OF THE EDUCATION AND TRAINING REFORM ACT 2006

The Panel found the allegation proved on the grounds of the teacher’s own admissions and the fact that the evidence was not disputed.

In determining that the teacher’s actions constituted serious misconduct the Panel was mindful of the ruling in *Kellam J in Parr v Nurses Board of Victoria* VCAT (2 December 1998):

In my view the question of whether or not a nurse has engaged in unprofessional conduct of serious nature must depend on the facts of each case. Clearly such conduct would not be serious if it was trivial, or of momentary effect only at the time of the commission or omission by which the conduct was so defined. It must

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

The Panel believes that the teacher's behaviour was a serious departure from the professional standards expected of a teacher in that he transgressed the appropriate professional boundaries in terms of the personal nature of the conversations and communications he had with a troubled student over a considerable period of time. In so doing he failed to recognize and maintain the distinction between the appropriate pastoral care a teacher might exercise and the counselling more appropriately conducted by a qualified school counsellor. By his own admission his course of actions was inappropriate, even stupid. In one instance, the Panel believed, his action, or rather inaction, had potentially disastrous consequences, a belief in which the teacher concurred. This involved his failure to inform at the appropriate time, the relevant school authorities qualified in matters of student wellbeing and counselling and, through them, the student's parents.

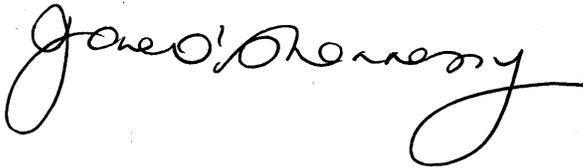
The Panel declined to find that the teacher is not fit to teach. In coming to this conclusion the Panel reflected on the decision in *Davidson v Victorian Institute of Teaching* [2007] VCAT 920. It was noted that in relation to lack of fitness to teach there is a perception that the conduct complained of is of a continuing and persistent nature; that it is conduct which throws doubt on how the teacher will conduct himself in the future; and there is a perception that the person should not be in a position of authority and trust with children because their whole approach to teaching and children in their care is profoundly and irretrievably flawed.

The Panel believes that the teacher does not fit any of the above criteria. Even though the teacher stated he no longer wished to continue teaching the Panel noted the significant degree of insight he demonstrated into his behaviour and his recognition that, given a similar scenario now, he would act very differently and within the guidelines provided by the Institute's Code of Conduct. Overall the teacher, the Panel believes, has done a good deal of soul searching about his behaviour to positive effect.

In determining that the teacher's registration should be suspended for six months with conditions, the Panel recognises that, while the teacher has made some progress in his understanding of the Institute's Code of Conduct, there still remains ambivalence in his understanding of the rationale for the professional boundaries the Code establishes. The Panel believes he needs to achieve a more rigorous understanding of the Code than he has at present. To that end the Panel requires him at the end of his suspension to provide a report from a registered psychologist which provides the Panel with the assurance that he has achieved that understanding. In particular the Panel requires the psychologist's report to addressing the following areas:

- differentiation between personal and professional relationships (adolescent / student and adult)
- development and maintenance of professional standards when working with young people
- actively determining and implementing professional boundaries with individual students,

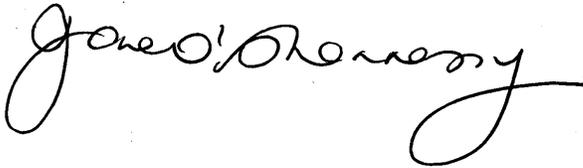
- making risk assessments of student's behaviour and informing the appropriate authorities
- understanding the extent and nature of student, colleague, parental and community trust inherently invested in a teacher
- understanding and fully adhering to the Victorian Institute of teaching Code of Ethics and Code of Conduct.



JANE O'SHANNESSY, CHAIRPERSON



**per:
TERRY HAYES, REGISTERED TEACHER**



**per:
POLLY FLANAGAN, REGISTERED TEACHER**