

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 101

REGISTERED TEACHER: Ainsley Greer GREGSON

PANEL MEMBERS: Susan Halliday, Chairperson
Norm Fary, Registered Teacher
Leneen Forde, Panel Member

ATTENDANCE: Ms A Gregson attended the Formal Hearing and was self-represented
Ms A Sheehan, Counsel Assisting with Ms K Galanos, instructing

DATE OF HEARING: 6 May 2010

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

On 14 July 2010 the Panel decided to cancel the registration of the teacher from 14 July 2010.

REASONS

BACKGROUND

The teacher became a provisional registered teacher with the Victorian Institute of Teaching (the Institute) on 3 October 2008.

By letter dated 3 April 2009, the employer notified the Institute that they had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher. The teacher's fixed-term employment with the employer ceased with effect 9 January 2009.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 22 April 2009 and the Committee decided to refer the matter to an investigation.

On 16 December 2009, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

On 3 October 2009, the teacher's provisional registration expired and on 20 January 2010, the Committee decided to continue with the enquiry.

A Notice of Formal Hearing dated 30 March 2010 was served upon the teacher by registered post on 7 April 2010.

THE ALLEGATIONS

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

Whilst employed as a provisionally registered teacher at the school, the teacher :

1. *Violated her professional relationship with an 18 year old student at the school, the student, by having sexual intercourse with him.*
2. *Compromised her professional relationship in failing to be a positive role model to the students by drinking to excess with them at their Year 12 end of year function.*
 - a) *On 16 December 2008 following a Year 12 presentation evening, the teacher attended a hotel with the students and became intoxicated when drinking with the students.*
 - b) *After the hotel closed at approximately 1.00 am, the teacher joined the students to continue drinking.*
 - c) *In or about the early hours of the morning on 17 December 2008, the teacher and the student walked together to his car and had sexual intercourse on the back seat of his car.*

THE EVIDENCE

The Student

The student acknowledged that he had made a statement for the proceedings and that it was true and correct. He told the Panel that he was a Year 11 student who attended a Year 12 celebratory function at a local hotel on 16 December 2008. Year 12 students had completed their exams; however the school year was still continuing. After an official school event concluded a number of students attended the local hotel. Two teachers were also in attendance. The teachers were teacher 2 and the teacher.

Teacher 2 left the hotel some time before it closed, but the teacher continued to drink alcohol at the hotel with students until about 1am. Take away alcoholic drinks had been purchased before the hotel closed and around 15 students and the teacher left the venue and walked to local parkland where they continued to drink. The student stated that he was drunk and decided to return to his car in the hotel car-park about 3am. The teacher's car was also in the car-park and they walked back together which took about 20 minutes. The student opened the back door of his car to sleep on the back seat. The teacher sat on his back seat. The student stated that they had consensual sexual intercourse. The student then fell asleep. When he awoke at 8am on the back seat, the teacher was there. She then woke up, got out of his car, and he left.

The student stated that the teacher was not one of his regular teachers. He said that after the celebration night that there was quite some talk around the school after the event and he tried to keep a low profile. He told the Panel that the incident affected him emotionally and socially, and he had counselling. He indicated that living in a regional area had compounded the impacts.

The Principal

The principal of the college acknowledged that he had made a statement for the proceedings. He corrected a date housed in the statement, and then stated that his statement was true and correct. The principal had employed the teacher on contract in 2008 and as a CRT in 2009. He indicated that in 2009 a staff member informed him about the possibility that there had been some untoward behaviour involving the student and the teacher. He interviewed the student who detailed what he remembered about the night of 16 December and the morning of 17 December 2008.

In March 2009 the principal spoke to the teacher about what had happened when she was employed on contract at the school in December 2008. The teacher responded in writing on 12 March 2009. The Panel reviewed the response. The teacher confirmed that she had been drinking with students at the hotel. She said people were buying her drinks and that she lost track of how much alcohol she had consumed. She also noted in her response to the principal that at 1 am when the hotel closed that she went with a group of students to local parkland. She stated that on the way she vomitted due to alcohol consumption and that the student stayed with her and had helped her. She later recalled falling and saying that she couldn't drink anymore as someone handed her another alcoholic drink. The teacher said that she could not recall anything after that. She said that she had left her car in the hotel car-park on 16 December. On 17 December she remembered waking up at 10 am in her own car.

When the principal interviewed the teacher on 16 March 2009, the teacher also told the principal that prior to the December 2008 school event the student had asked her to his 18th birthday party, and that she had declined the invitation. She said that she had remained at the 16 December 2008 celebration at the hotel that the students were having rather than go to a school related staff function that was taking place at the same time. The teacher had plans to stay at teacher 2's home on the evening of 16 December, but did not do so. She told the principal that on waking up in her car on the morning of 17 December at around 10 am, she drove to her home which was some distance away.

The principal could not recall if the teacher was next present at the school on 17 December or if it was on 18 December, noting that they were both professional development days. He stated that he generally had a good opinion of the teacher and that she was mentored by three senior staff in her area when on contract. He indicated that the teacher was shocked and taken aback by the allegations he put to her, noting that she had a visible physical reaction, gasping for breath.

The principal stated that the student was of good character, and that he was a young person who related well to all. He stated that the student was nervous when relaying what had happened on the night and with the teacher. The principal stated that he had no reason to doubt what the student had said.

Teacher 2

Teacher 2 acknowledged that she had made a statement for the proceedings and that it was true and correct. She told the Panel that it was usual for country teachers to stay at each other's homes when school related functions were on, and that the teacher had asked if she could stay at her home on the evening of 16 December 2008. She agreed to the request given there was a school related function at another staff member's home, that she believed the teacher would attend.

Teacher 2 stated that she went to the local hotel to farewell Year 12 students, and that the teacher was there when she arrived. When she was leaving around 10 pm to go to the staff function she offered the teacher a lift. The teacher declined the lift saying that she would make her own way to the staff function shortly. The teacher did not attend the staff function or stay the night at the home of teacher 2. Teacher 2 recalled that she saw the teacher at around 9 am the next day at school and that the teacher said that she had slept in her car. Teacher 2 thought this interaction happened on 17 December not 18 December 2008.

The Teacher

The teacher gave evidence in an open and frank manner. She stated that she had had a problem with alcohol since university, and that at times she drank to excess. She said that there were also times where she could not remember what happened on the nights that she drank. The teacher stated that since the incident she had sought help in order to curb her drinking and was currently employed in a different industry in another part of the state.

The teacher stated that during her pre-service teacher training she was made aware of the Victorian Institute of Teaching Code of Conduct and the Code of Ethics. She stated that she understood the importance of setting boundaries and had observed other teachers do so. She also gave evidence that the contract at the school was her first permanent role.

The teacher told the Panel that she did not dispute the evidence of the student. She said her own recall of the evening was limited and she did not remember whether or not she had sexual intercourse with the student. She stated that she did not recall much after vomiting when walking to parkland with the group of students. She stated that when she awoke in her own car at 10 am on 17 December 2008 that she drove home and did not attend the school that day. She stated that she attended the school on 18 December 2008 and that there was a BBQ on there that day and that 18 December was her last day. She stated it was on 18 December (not 17 December as teacher 2 recalled) that she saw teacher 2 and discussed not staying at her place on the night of 16 December 2008.

The teacher indicated that it was possible that she awoke at 8 am when the student did, in the student's car, and then got into her own car going back to sleep until 10 am. She noted that when she woke at 10 am in her own car that she did recall thinking to herself that she had found herself in another situation where she had limited recollection of what had happened after she had been drinking, not knowing why she was, where she was.

The teacher stated that she felt more at ease with the students, than the staff at the school, as they were closer in age to her. She said that she had been to staff functions before and did not enjoy them. She said that the celebration that she attended at the hotel was also like a farewell for her given that her contract had finished. She stated that students were buying her drinks to farewell her and that she had a good time. The teacher was honest with the Panel and stated that she had intended to go to the student function, not the staff function all along, and hence did not accept a lift from teacher 2 to the staff function.

The teacher stated that she understood that untoward behaviour affected her reputation, the reputation of the school, and her authority as a teacher. She stated that she was very sorry for what had happened and understood how serious the matter was. She voiced remorse for the student and his family. She reflected on the impacts for her own family. She indicated that she had been involved in counselling and done several alcohol related courses. She indicated that she also knew that she had to come to terms with having come from a family that did drink, and what that meant for how she managed her own life and future.

FINDINGS UNDER SECTION 2.6.46(1) OF THE ACT

The Panel agreed that based on the balance of probabilities that Allegations 1 and 2, and the related particulars at (a) (b) and (c) were substantiated. The Panel acted with caution when making this decision, mindful of the weight and complexities associated

with hearsay evidence and the standard of reasonable satisfaction required in relation to *Briginshaw v Briginshaw* (1938) 60 CRL 336.

The Panel noted that it believed that the sexual intercourse was not anticipated or planned by the teacher, and was not predatory in any way. The teacher was very intoxicated. She had consumed excessive amounts of alcohol resulting in vomiting a couple of hours prior to the sexual activity.

The teacher's conduct on the 16 and 17 December 2008 is serious misconduct. The teacher engaged in excessive drinking with students, having planned to attend the student function rather than the staff function, and was involved in sexual intercourse with a student attending the school (albeit a student aged over 18) while still employed at the school.

When teachers engage in serious misconduct it greatly compromises the reputation of, and the trust placed in, the teaching profession, and further has the potential to diminish the trust and respect extended to younger members of the profession. The serious misconduct of the teacher was considered in light of *Pillai v Messiter* (No 2) 1989 16 NSWLR 197. It was noted that the public must be protected from "*delinquents and wrong doers Such people should be removed from the register ... at least until their disqualifying imperfections have been removed..*"

Examining *Parr v Nurses Board of Victoria* VCAT (2 December 1998) the Panel noted "*... such conduct would not be serious if it was trivial, or of momentary effect only at the time of omission by which the conduct was 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 role of the teacher is not to be a friend or close friend, rather an adult role model who can engage with students in a professionally friendly manner, as appropriate in formal and informal settings. The Panel notes that it was not appropriate for the teacher to engage in the consumption of alcohol with students in the manner that she did. The impacts for the teacher as a registered professional are not lessened because she decided to consume alcohol.

The Panel was of the view that the teacher was not fit to teach. The teacher showed a reasonable level of personal and professional insight given the time that had passed. The teacher also demonstrated that she had travelled some distance emotionally since the events of December 2008. The Panel was of the view that the teacher still had some significant personal development and counselling work to do, and hence was currently not fit to teach.

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SUSAN HALLIDAY, CHAIRPERSON

A handwritten signature in cursive script that reads "Susan Halliday".

per:
NORM FARY, REGISTERED TEACHER

A handwritten signature in cursive script that reads "Susan Halliday".

per:
LENEEN FORDE, PANEL MEMBER

ORDERS UNDER SECTION 2.6.45 OF THE ACT:

The Panel Orders pursuant to section 2.6.45 (d) and (e) of the *Education and Training Reform Act 2006* that:

1. in the hearing into the serious misconduct/fitness to teach of the teacher, a registered teacher, be closed to the public because of the intimate personal or financial nature of the evidence.
2. the identity of the following witnesses not be published or broadcast:

The student
The principal
Teacher 2

and the following information that may lead to the identification of the witnesses:

The town
The school

The Panel Orders pursuant to section 2.6.45 (f) of the *Education and Training Reform Act 2006* that:

in the hearing into the serious misconduct and or a lack of fitness to teach of the teacher, a registered teacher, any information that might enable the teacher to be identified prior to the making of a final determination must not be published.