

## **VICTORIAN INSTITUTE OF TEACHING**

### **DECISION AND REASONS OF THE FORMAL HEARING**

**NUMBER:** 104

**REGISTERED TEACHER:** Irene Rosemarie HAM

**PANEL MEMBERS:** Marilyn Mooney, Chairperson  
Nicole Lylak, Registered Teacher  
Sophie Panagiotidis, Panel Member

**ATTENDANCE:** Mr Edward Johnson, Industrial Officer, Australian Education Union on behalf of the teacher  
  
Ms Melinda Richards Counsel Assisting with Ms Katrina Galanos instructing on behalf of the Victorian Institute of Teaching

**DATES OF HEARING:** 8, 9 and 10 November 2010

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

On 8 December 2010 the Panel found the teacher guilty of serious incompetence and imposed the following conditions on her registration:

1. When the teacher recommences teaching:
  - She is to organise at her own expense a registered primary school teacher of at least five years experience to act as her professional mentor throughout the first year after she returns to teaching. The mentor may be either internal or external to the teacher's workplace. The role of the mentor is to assist the teacher through peer support and collegial advice to reflect on her professional practice including:
    - time management skills

- planning and preparation for lessons, including catering for special needs students
- developing appropriately detailed work programs for classes
- classroom management strategies
- strategies for engaging students
- providing appropriate supervision to students
- developing appropriate assessment of students
- working collaboratively with colleagues, teacher aides and integration aides
- The teacher's mentor is to provide to the Panel two reports, the first after six months and the second after twelve months on the teacher's professional competence, including but not limited to:
  - the range of strategies employed in classroom management
  - the teacher's ability to establish her presence and authority in the classroom
  - the teacher's ability to provide appropriate work programs
  - the teacher's ability to develop relationships with students and colleagues including teacher aides/integration aides and parents
- If the teacher is employed in a school for six months or more during the first year after she returns to teaching, the principal of the school where she is employed is to provide a report every six months on the teacher's professional competence, including but not limited to:
  - the range of strategies employed in classroom management
  - the teacher's ability to establish her presence and authority in the classroom
  - the teacher's ability to provide appropriate work programs
  - the teacher's ability to develop relationships with students and colleagues including teacher aides/integration aides and parents
- If the reports from the teacher's mentor and/or school principal are not satisfactory, she will be required to undertake further mentoring for a duration that is to be determined by the Panel.

## REASONS

### BACKGROUND

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

By letter dated 24 October 2008, the employer notified the Institute of action taken against a registered teacher, the teacher. The teacher's fixed term employment was terminated by the employer, effective from 8 December 2007.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 20 May 2009 and the Committee decided to refer the matter to an investigation.

On 10 March 2010, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 20 May 2010 was served upon the teacher by registered post on 26 May 2010 and an Amended Notice of Formal Hearing dated 20 October 2010 was served upon the teacher's representative by email on 20 October 2010.

### THE ALLEGATIONS

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

*Whilst employed as a registered teacher at the school, during the period 2004 to 2006, the teacher:*

1. Failed to plan and prepare adequately for lessons:
  - a. During 2004:
    - i. Failed to produce work programs for her Year 5/6 class;
    - ii. Failed to provide work programs to aide 1, an integration aide who worked in the class with visually impaired student, AB;
    - iii. Failed to provide work programs to teacher 1, who taught the class on Fridays in Terms 3 and 4, 2004.
  - b. During Terms 3 and 4, 2005:
    - i. Failed to produce sufficiently detailed work programs for her Prep class;
    - ii. Failed to provide sufficiently detailed work programs or written evidence of work programs in order for a relief teacher to be able to take over classes;
    - iii. Failed to provide work programs to aide 2, an integration aide who worked in the class with a special needs student, CD.

- c. During Term 2, 2006:
    - i. Failed to produce a sufficiently detailed term plan for Physical Education until 9 weeks into the term;
    - ii. Failed to produce sufficiently detailed weekly work programs;
    - iii. On 7 April 2006, failed to provide a sufficiently detailed work program or written evidence of a work program in order for a relief teacher to be able to take over her Year 2/3 class.
2. Failed to structure lessons adequately:
- a. During Terms 3 and 4, 2005 in her Prep class:
    - i. Commenced literacy blocks at 9.20 am or 9.30 am rather than promptly at 9.05 am;
    - ii. Conducted “show and tell” activities during literacy blocks;
    - iii. Did not change the books in the reading box for over a month;
    - iv. Did not ensure that students took home new readers each day.
  - b. During 2006, in her Physical Education (PE) classes:
    - i. Failed to implement enough activities for the class, so that students were often standing around without any activity to participate in, or were restless, roaming around or misbehaving;
    - ii. Failed to implement a variety of activities, or to change the structure of activities (including ball skills, exercises and games);
    - iii. Failed to implement activities that had a clear sequence or purpose;
    - iv. On one occasion, failed to ensure that enough skipping ropes were available so that all students could participate in a skipping activity;
    - v. Failed to adequately implement the Perceptual Motor Program such that students were not engaged in the activity, many becoming distracted and/or wandering off.
3. Failed to demonstrate appropriate classroom management:
- a. During 2004, in her Year 5/6 class failed to maintain appropriate noise levels in the classroom and allowed students to wander around the classroom.
  - b. During Terms 3 and 4, 2005 in her Prep class:
    - i. Failed to maintain appropriate noise levels in the classroom;
    - ii. Failed to discipline effectively students who were running around or rolling around the classroom floor.
  - c. During Term 2, 2006, in her PE classes:
    - i. On 2 May 2006, failed to address adequately the refusal of participation of two Grade 5 students;
    - ii. On 3 May 2006, allowed students to move away from the class in circumstances where they played in the garden area;
    - iii. On 9 May 2006, allowed children to become restless, roam around and not participate in activities;
    - iv. On 16 May 2006, failed to manage students’ behaviour effectively.

4. Failed to supervise students adequately and create a safe environment for students:
  - a. On 18 November 2005, while taking her Prep class to a 10 day teaching program at the town's Aquatic Centre:
    - i. Positioned herself near a kiosk at the top of the stairs at the opposite end of the complex to where the students were swimming and worked on her laptop computer;
    - ii. Failed to supervise effectively female students in the public change room.
  - b. On 7 December 2005, failed to notice that special needs student CD was missing from her Prep class from 2.45 pm for up to 25 minutes.
  - c. During Term 2, 2006:
    - i. On 31 March 2006, 28 April 2006 and 5 May 2006, failed to properly pack up children in her Year 2/3 class prior to the final bell to ensure their safe and timely departure from school;
    - ii. On 4 April 2006, failed to attend the library in order to meet and supervise students (as arranged with them).
  - d. During Term 2, 2006 in her PE class placed a trampoline on the bitumen basketball court without padded safety mats.
5. Failed to cater for students with special needs:
  - a. During 2004 in her Year 5/6 class failed to coordinate with Integration Aide, aide 1, in order to properly plan and discuss the needs of visually impaired student AB.
  - b. During Terms 3 and 4, 2005 in her Prep class:
    - i. Failed to implement a reward system for special needs student CD;
    - ii. Otherwise failed to deal with CD properly and establish a relationship with him in order to manage his sometimes difficult behaviour.
  - c. In 2005 whilst teaching Prep failed to build an appropriate working relationship with Integration Aide, aide 2, in order to discuss the individual learning needs of special needs student CD.
6. Failed to assess students appropriately:
  - a. During Terms 3 and 4, 2005, failing to assess accurately the literacy skills of the students in her Prep class.
  - b. During Term 2, 2006 in her PE classes, failing to provide detailed and meaningful assessments of the development of students' skills.

7. Failed to demonstrate collegiality with other staff members:
  - a. Failed to co-ordinate with integration aide, aide 1, as alleged in 5.a.
  - b. In Terms 3 and 4 2004, whilst teaching her Year 5/6 class part-time, dismissed the attempts to discuss work programs of teacher 1, who took the class every Friday, in circumstances where teacher 1 had to teach each week without any indication of an overall curriculum or weekly class plan.
  - c. Failed to build an appropriate working relationship with integration aide, aide 2, as alleged in 5.c.
  
8. Was disorganised and unreliable:
  - a. The matters alleged in 1 to 7 are repeated.
  - b. In Terms 3 and 4 2004, whilst teaching her Year 5/6 class, failed to maintain a neat and organised classroom.
  - c. Failed to organise ingredients for Family Science Night on 23 November 2004 in a timely manner.
  - d. On 14 December 2004, was absent from the school grounds at a time when she was timetabled to be on yard duty.
  - e. On 31 March 2006, left her Year 2/3 classroom messy with scraps of paper on the floor and the computers on.
  - f. On a Wednesday in May 2006, asked to meet with teacher 3 after school, and then left the school without informing teacher 3 in person that she was unable to attend the meeting.
  - g. Failed to meet with House Captains to prepare them for the Jump Rope for Heart event in May 2006, despite telling a staff meeting in May 2006 that she would do so.
  
9. Continued to be disorganised and unreliable after:
  - a. Receiving a letter dated 7 October 2005 from school principal The principal, identifying areas of the teacher's performance as an expert teacher in which she needed to demonstrate improvement;
  - b. Receiving a letter dated 25 November 2005 from the principal seeking an explanation as to issues raised concerning the teacher's supervision of children during swimming lessons, including the matters alleged in 4.a;

- c. Receiving a letter dated 1 February 2006 from the principal informing the teacher that she was not performing to the required standard as an expert teacher and outlining areas of unsatisfactory performance; and
- d. Undergoing a 10 week monitoring period in Term 2, 2006.

## **THE EVIDENCE**

### **Teacher 1**

The Panel heard evidence under oath from teacher 1 who confirmed her written statement as true and accurate. Teacher 1 told the Panel that she qualified as a teacher in 1963 and taught at several schools around the state. Prior to retiring she had taught a variety of classes at the school for 18 years and undertook various administrative roles and senior responsibilities equivalent to that of an Assistant Principal. She stated that she undertook casual relief teaching at the school in 2004 and taught in the teacher's class every Friday as well as if and when the teacher was absent which was frequent.

Teacher 1 told the Panel that there was very little consultation regarding the teaching program with the teacher. She said that if they happened to be in the school on the same day teacher 1 would enquire as to what was to be done but the teacher was quite happy for her to do what she liked. Teacher 1 said that as the term progressed, she would leave notes as to what she had done but the teacher did not communicate or ever leave her Work Program for her. Teacher 1 stated that as an experienced teacher she spoke to other Year 6 teachers for a parallel Work Program. She tried to provide a program that followed on from the teacher's and was meaningful but without a Work Program to follow or discussions with the teacher this was difficult. She said that in the teacher's classroom there was no evidence of Middle Years planning, implementation or assessment. She told the Panel that she was aware that both Year 6 teachers planned together and agreed that she could have talked to the other Year 6 teacher regarding the teaching program. Teacher 1 agreed that she and the teacher had organised for her to teach poetry and literacy as this was teacher 1's strength and passion.

The Panel heard that the teacher's classroom was untidy and unclean which doesn't necessarily equal a lack of learning but does take away from a stimulating environment. Teacher 1 said that she noticed the students' behaviour had deteriorated and that they had a fairly negative attitude to learning. "In particular, there was a group of girls who had become quite rude and would simply just walk out of the door in the classroom without an explanation." She spoke to the principal regarding their attitudes and tried other activities such as cooking. Teacher 1 said that she guessed the students' negative attitude was a result of the poor organisation in the classroom and students not having a strict code of conduct. She told the Panel that the students were used to leaving the classroom without permission and they assumed they could wander around the school unsupervised. She stated that when she challenged them the students would get annoyed and resent her questioning and told her that the teacher lets them leave the room to work on their projects. The Panel heard that there was a general policy in the school that no child would be left unsupervised anywhere.

Teacher 1 told the Panel that student Learning Diaries are an important part of the reporting process and that the teacher's were "not up to scratch". She said that there were too few pieces of work and that what was there had not been commented on to give a context to educational relevance. The Panel heard that the teacher did not plan or cater for students in her class who had special learning needs. Teacher 1 said that she could not find any material or activities that were specifically developed or provided, in particular, for two students who needed a modified learning program.

Under cross-examination teacher 1 agreed that her beliefs of the teacher's teaching are based on impressions as she had never taught with her or observed her teach.

Teacher 1 told the Panel that she had been part of the Panel that carried out the selection process for the Middle Years position that the teacher applied for unsuccessfully. She said that her vague recollection of the interview was that the teacher did not address the selection criteria, even confusing Middle Years with Years 3 and 4. The Panel heard that the Merit Protection Board overturned the school's decision and appointed the teacher to the position. Teacher 1 said that she was professional enough not to allow this outcome to affect her relationship with the teacher.

Teacher 1 explained to the Panel that the principal asked her to comment on the teacher's Performance Review. She said that what the teacher had claimed to be her approach and practice to teaching was not evident to teacher 1 whenever she was in the teacher's class. She also told the Panel that the teacher had a one page program planning document prepared with the other Year 6 teacher. This was a broad plan for the term's program and was a general outline of a week's work but not a detailed plan which should include specific individual teaching and group activities.

### **Aide 1**

Aide 1 gave evidence under oath and confirmed his written statement as true and accurate. The Panel heard that aide 1 had worked for the town's Bus Lines and a bank for a total of 31 years prior to taking up employment with the school. In 2002 and 2003 he worked as a teacher aide but is currently in an administrative position t at the school. He has a Certificate III qualification as an integration aide.

Aide 1 told the Panel that in 2004 he was a full time aide for a visually impaired student, AB, who was in the teacher's class. He said that he mainly worked with AB but as a result of the teacher's teaching practices he often ended up working with and supporting a small group of needy students including EF and GH. Aide 1 said that other teachers he had worked with had prepared material for the students prior to the class commencing and that he was generally not required to photocopy particular sheets or work for the students he was working with. He told the Panel that other teachers would speak to their aides about what was required prior to the lesson so that they would be prepared for their students.

He stated that although he was called out of class from time to time by the principal, it was an incorrect assertion by the teacher that he was not readily available all the time in class or to discuss AB with her.

Aide 1 told the Panel that his experience in 2004 was that he would sit down with AB and wait for instructions from the teacher. He would then have to leave the class to photocopy and enlarge work sheets for AB which left the student without help. He said that had he been informed by the teacher prior to the class commencing he would have been better prepared. He said that he didn't raise any of these issues with the teacher but because of his experience with other teachers he thought her practice wasn't right. He was new at the job and the teacher was an experienced teacher and he assumed that that was how she operated.

Aide 1 told the Panel that he never saw the teacher's Work Program. Other teachers would have it in or on their desk or on the whiteboard. He said that on Fridays when teacher 1 had the class she would provide information to him so that he could plan for AB. He stated that the teacher had trouble controlling the class and some of the students did not seem to respect her. He said that the noise levels rose more frequently than in other classes he had worked in. Aide 1 explained to the Panel that the teacher would use a "stop, freeze" strategy to bring the class back in to order but because she used it so many times it lost its impact and the students simply stopped paying attention. He said that teacher 1 had no difficulty in controlling the class.

Under cross examination aide 1 acknowledged that AB was put at the front of the class and if the print on sheets was large enough he could read it. He said that since his integration aide course he was aware of Learning Improvement Plans but that he never had access to any.

## **Aide 2**

Aide 2 gave evidence under oath and confirmed her written statement as true and accurate. She told the Panel that she has been an integration aide at the school for 8 years. She has a Certificate III in Education (Literacy and Language Stream) and has completed many professional development activities. Prior to becoming an integration aide, aide 2 told the Panel she did bar, waitressing and kitchen hand work.

Aide 2 explained to the Panel that she worked with a Prep student, CD, who was a student with special needs. This was the Prep class previously taught by teacher 2 but now taught by the teacher. She said that CD had behavioural issues and needed a structured learning environment although he did respond well to a rewards program. The Panel heard that CD had ADHD and had an intellectual disability. She said that he was a very difficult student. Aide 2 stated that she was with CD for one hour a day during the Literacy block.

Aide 2 told the Panel that she and the previous Prep teacher, teacher 2, would plan the program for CD during planning time or team meetings. She said that teacher 2 would provide a Work Program or if not, it would always be on her table. Aide 2 said that the teacher had limited communications with her regarding planning and she never told aide 2 what to do with CD. She said that she never saw a Work Program. The Panel heard that within the first 3 weeks of aide 2 working with the teacher, aide 2 asked for a Work Program and was told it was organised but she never saw it. Aide 2 said that she gave up asking after 3 weeks. Aide 2 stated that in order to modify CD's program she

would go to the Grade 1/2 teachers to see their programs and work backwards in order to discern what the Prep students should be covering. Other times she would simply modify the program on the spot.

The Panel heard from aide 2 that the teacher's class was much noisier than others and the students seemed to be left to entertain themselves. She said that sometimes about 10 students rolled around on the floor and it was clear that there were no rules or boundaries in the classroom. The teacher often ignored the students marching around but it was difficult, and this distracted her from helping CD. Aide 2 said that the teacher would be busy with her little group and ignored the naughty ones. She told the Panel that when she was in the class with teacher 2, teacher 2 would stop the noisy students and bring them back on to task.

Aide 2 stated that the teacher's classroom always seemed disorganised and activities disjointed. There were some structured times for reading and writing but she noticed that there were a lot of Show and Tell activities. She said that Show and Tell was good for oral language development but spending 20-40 minutes on this was way too long. The concentration of Preps waned as well as taking invaluable time from the 2 hour Literacy Block which has a very structured reading and writing focus.

The Panel heard that CD responded very positively to a special rewards strategy that was developed by Hospital A to assist the school and CD's family accommodate his needs. The system involved a chart with stars and if CD received a certain amount of stars he received a reward such as working on the computer, doing a jigsaw, etc. Aide 2 said that after one week the chart went missing and was unable to be located. She then organised for a book to be used but that too disappeared within a week. She said that she found these events frustrating and disheartening and in the end she ticked his hand as an informal reward system. She told the Panel that the teacher did not know where the chart or book had gone.

Aide 2 told the Panel that CD did not have a positive relationship with the teacher. She said that when CD first arrived at the school in Prep he would crawl under the table but that after some time he stopped doing that and developed a very good relationship with his teacher, teacher 2. Aide 2 told the Panel that midway through 2005 under teacher 2's care, CD was making progress, seemed a lot calmer and showed signs of improvement. She stated that in the second half of the year under the teacher's care he reverted back to crawling under the table. Aide 2 said that teacher 2 would set very clear boundaries for CD and was firm with her expectations but the teacher did not do this.

The Panel heard that aide 2 found her relationship with the teacher to be difficult, tense and frustrating and that she was treated in an off handed and dismissive manner. She said that she believed the teacher found her annoying because she would press her for a Work Program so that she could prepare for her students.

Aide 2 told the Panel that during the swimming program she saw the teacher using her laptop computer near the kiosk at the opposite end of the 25 metre pool to where her Prep class were. She said that on this particular day as well as her special needs student,

there was an autistic student accompanying the class so that he could experience the structure of a school environment. Aide 2 stated that this student became very anxious and panicky when they were trying to put flippers on him. She said that she waved frantically to the teacher for help but couldn't get her attention. Aide 2 stated that as well as the swim instructors there were also two Year 5/6 classes and their teachers, an integration aide, a parent helper, the teacher and herself present. She said that each class teacher is responsible for their own students and the integration aides are present to assist specific students. Aide 2 said she believed that the teacher would not have been able to clearly see any of the students especially those in the toddler pool. She said the teacher wandered around the pool in the last 20 minutes to briefly check on the students and only checked once on the girls changing. She spent the rest of the time in the foyer not assisting any of the students. Aide 2 told the Panel that she had never seen a teacher behave in such a way and made a formal complaint to the principal, the principal. She said that she had never been in a position of being in charge when a teacher was present.

Aide 2 stated that the students in the teacher's PE classes misbehaved and the content of the lesson was not engaging for students. She said that the Perceptual Motor Program (PMP) is a program for Preps that involves various physical activities that the students rotate through approximately every 3 minutes. Aide 2 said that when the teacher conducted PMP it was a shambles. Students were at stations too long, became distracted, were naughty and some ran away hiding under bushes. She said that when she suggested changes the teacher refused and that when students ran away the teacher seemed to ignore it resulting in aide 2 fetching them. The Panel heard that one of the teacher's PE classes involved a trampoline being used on bitumen without mats. Aide 2 told the Panel that when she told the teacher that mats had to be used the teacher said words to the effect "it's not that far to fall". Aide 2 stated that the structure of PE classes saw the same skill exercises and games continue for 5-6 weeks resulting in students misbehaving.

### **The principal**

The principal gave evidence under oath and confirmed her written statement as true and accurate. The principal told the Panel that she retired from teaching this year after 35 years of service. She said her experience covered classroom and specialist teaching, regional consultancy, and leadership positions, including being Principal of the school from 2001.

The Panel heard that the school is a smallish country school in an urban area. She said that enrolments were dropping which impacted on funding which in turn impacted on numbers of teachers and programs that could be offered. The Panel heard that parents were aware that they had choices regarding schools in the district for their children. She stated that because of this situation it was important to work co-operatively with staff and encourage parents. The principal said that the school was a low-socio economic area and the school had many students with special needs. She said that the school had a very strong culture of volunteering parents which was highly valued and nurtured.

The principal explained that in October 2002 the teacher applied for a Middle Years teaching position at the school. Her application was as a compassionate transfer which is given priority in the application process. The principal said that she wanted a competent and experienced teacher to lead the middle years program at the school. She stated that she was reasonably happy with the teacher's responses in the interview but was disappointed that the teacher had no knowledge of the 'Middle Years' concept, indeed didn't mention middle years at all during the interview. The Panel heard that the selection Panel decided that the teacher's application was unsuccessful. The teacher then lodged an appeal to the Merit Protection Board (MPB) which, in December 2002, overturned the school's decision and appointed the teacher to the school. In its decision the MPB acknowledged that the selection Panel followed procedures appropriately; however it felt that the teacher should be able to meet all the selection criteria within a reasonable period of time with support from her counterparts in the cluster network.

The principal told the Panel that it was a difficult time because the MPB's decision to appoint the teacher to the school affected another staff member's position. In response to a question from Counsel Assisting regarding the teacher's belief that the principal did not accept this decision with good grace, she said that she made a special effort to make it work. The principal discussed with her staff the need to welcome the teacher and give her a fair chance. The Panel was told that although the principal received the teacher's file from school 1 around the time the teacher started at the school, she did not read it and instead she put it at the bottom of her filing cabinet.

The Panel heard that due to a WorkCover injury the teacher was not able to take up her position at the school until Terms 3 and 4, 2003 and was still not fulltime by the end of the year. The principal said that she could not recall discussing the possibility of on-going part time work with the teacher, but she did discuss the possibility of her working four days and having the 5<sup>th</sup> day off which would allow her time to recover. In response to Counsel Assisting's question about whether the principal pressured and did not support the teacher when she phoned in sick, the principal told the Panel that other staff, including five with breast cancer, also needed time off so it was no different to organise replacements for the teacher. In response to the teacher's assertion that she felt 'palpable displeasure' from the principal, she told the Panel that she couldn't recall feeling that way but that she may well have been abrupt.

The principal stated that the teacher was responsible for purchasing and organising the ingredients for the Family Science Night. Teachers were getting quite anxious as ingredients were still not available on the day of the Family Science Night which delayed the preparation of their activities. The teacher purchased the ingredients at 5pm and the science activities commenced at 6pm. The principal said that this indicated to her that the teacher was disorganised and caused her to wonder whether or not the teacher had the requisite organisational skills to be a teacher.

The principal explained to the Panel that the teacher wanted to continue to work part time in 2005 but because all classes had been allocated it wasn't possible. She rejected the teacher's assertion that she placed administrative obstacles in her way. The teacher was on WorkCover in Terms 1 and 2, 2005 and then requested part time work for the remainder of the year. The principal asked the teacher to obtain a report from the

medical officer to ascertain the teacher's ability to carry out all the duties required of a teacher. She said that on 25 July 2005 the Occupational Physician deemed the teacher fit to return to work and undertake the complete range of responsibilities of her profession.

The Panel heard that the principal saw the teacher's return to work in Term 3 2005 as a good opportunity to release teacher 2 from her Prep class so that she could undertake the assistant principal role and to support and mentor the teacher. The principal rejected the teacher's assertion that she was 'extremely displeased that she hadn't gone away' and that she had become 'persona non grata'. The principal said that if she had seen or been aware that other staff had treated the teacher in this way she would have been horrified and would have acted on it.

The principal told the Panel that in July 2005 the teacher's Performance Review for the October 2003 – October 2004 period was held. It was well overdue due to the teacher's extensive absences. The principal said that she raised concerns with the teacher about her performance during the mid-cycle review and followed this up with a letter dated October 7, 2005 outlining the areas of performance as an expert teacher she needed to demonstrate improvement in. As part of this, the principal organised a range of supportive measures including: Teacher 2 to undertake demonstration lessons in Early Years curriculum and to assist the teacher with planning; and visits to school 2 and regional Primary Schools to observe Early Years curriculum and organisational techniques of other teachers.

The principal told the Panel that it was sometimes difficult to raise issues with the teacher as it appeared that she did not want to listen, so for this reason she sometimes referred to concerns that she had about the teacher as general issues in the context of a staff meeting. She said that she was trying a "more subtle approach".

The Panel heard that the principal was able to observe the teacher's Prep class when she taught in the class next door. She stated that the noise levels were extremely high and the room was chaotic with students not on task. The principal said that she found it frustrating as she was trying to get her class to settle down and be on task and to focus on the activity. She said that the teacher's class did not settle down into the Literacy Block for approximately 20 minutes into the 2 hour block. She said that she had serious concerns with this waste of precious literacy learning time.

The principal told the Panel that on occasions when she had taken casual relief teachers into the teacher's room she had trouble either locating the Work Program or working out the intent of the program or activities. She stated that the star chart reward system that had been established for CD was very important in his learning. She said that she was very disappointed and disheartened that the teacher had not used the chart. She said she could not see any replacement reward system. The principal told the Panel that she observed that CD had regressed significantly. She said that he was sent to her or voluntarily went to her office more frequently – a sign she believed of the teacher's inability to form a positive relationship with CD.

The Panel was told that on the day of aide 2's complaint about the teacher's lack of supervision and leadership at the swimming pool, the teacher did not want CD to go swimming because of his poor behaviour in the morning but the principal insisted he go. The principal said that she also had complaints from parents that the teacher did not involve herself in the change rooms with students. She said she asked two other teachers for their recollections of the teacher's involvement during the lesson and both confirmed and supported aide 2's account that the teacher was using her laptop computer during the swimming lesson. The principal told the Panel that by letter of 25 November 2005 she sought a response from the teacher regarding her supervision of Prep students at the swimming pool. In her response the teacher admitted that she had used her laptop at the swimming pool but that she also supervised the students at other times.

Under cross examination the principal told the Panel that there was no supervision roster organised. She said that teachers who required parent helpers organised their own then prepared a roster and gave a copy to the principal. She added that the teacher is in charge at the pool and the teacher aide is there as support.

The principal explained to the Panel that after discussions with the teacher regarding teaching options for 2006 it was decided that in Term 1 she would teach Art for 4 days a week as the Art teacher was on leave. She said that the teacher taught for one week then went on sick leave for most of Term 1. She again taught Art for the first week of Term 2 until the Art teacher returned from leave. The principal said that she then allotted PE to the teacher as the school needed a PE teacher. The principal told the Panel that she didn't have many options with staffing and as the teacher had been given a positive medical report she thought the allocation was fair. She told the Panel that the teacher's teaching allocation also included one day in a class teaching literacy.

The Panel heard that in March 2006 the principal commenced a formal monitoring period of the teacher's professional performance. The principal said that she had been receiving a lot of feedback from the school community and that she had also become significantly concerned after seeing the literacy results of the Prep students from 2005. She was also concerned that the teacher was not discharging her duty of care appropriately. The principal said that the issue had been discussed with the teacher on a number of occasions but it seemed to be a recurring problem. She told the Panel that setting up a monitoring period and establishing a support group was a gut wrenching experience, particularly in a small school with a close working staff. She said that she and the support group were inexperienced in conducting this process but she was hopeful that the teacher would, with support from empathetic and experienced teachers, improve and the process could end successfully. The Panel heard that although the employer's staff were helpful, she was "flying blind" really. In response to Counsel Assisting's question regarding the provision of written advice as per the employer's guidelines, the principal said that she couldn't recall but that she would have provided something. In response to the Disciplinary Appeal Board's quite critical commentary on the school's processes and handling of the monitoring period and support group, the principal told the Panel that the process could have been improved and she would have welcomed better advice and support.

The principal stated that the support group found it difficult to work with the teacher as they felt she was unwilling to take on suggestions or listen to advice. She gave the example of the teacher experiencing difficulty in getting the students' attention in PE. Teacher 4 suggested using a whistle but the teacher took weeks to get one.

Under cross examination the principal acknowledged that the teacher had recognised that there were deficiencies in her management of the students' learning diaries and that teacher 1 had indicated to the principal that they had improved. The principal told the Panel that on one occasion she observed that there was no teacher on yard duty and after investigating discovered that the teacher was rostered on but was not in the yard. She said that there was a clear roster displayed in the staff room and that it was always grave for a teacher to miss yard duty.

### **Teacher 3**

Teacher 3 gave evidence under oath and confirmed her written statement with one alteration to paragraph 18 as true and accurate. Teacher 3 stated that she has been a teacher at the school since 1999 as both a classroom and Reading Recovery teacher. She is an experienced teacher with her initial qualification gained in 1974. She has taught kindergarten and primary classes and in 1980 trained as a Reading Recovery teacher and has worked in this field since then.

Teacher 3 told the Panel that she was a member of the support group during the teacher's monitoring period. She said that as part of assisting IJ in Reading Recovery she would spend time in the classroom with him. That way she was able to observe the teacher's Year 2/3 class on a Friday morning.

The Panel heard that teacher 3 and the teacher co-ordinated a lunch time program, established for students with social skills problems. Teacher 3 said it was important that the students were collected from their classrooms at the set time because if they went outside it was difficult to retrieve them. She stated that on several occasions the teacher did not arrive on time to collect the students. Teacher 3 said that the teacher also failed to adhere to timeframes for classes as she failed to have students returned to their classrooms in appropriate time for dismissal. The Panel heard that this often caused safety issues as the students would run down the corridor, narrowly missing other students on their way home. Teacher 3 told the Panel that during the support group meetings they discussed the problem and she offered strategies on packing up but the problem continued.

Teacher 3 told the Panel that her role during the monitoring period was to provide support in the areas of engaging in effective communication and organising for effective learning and engagement of students. She couldn't recall whether the principal had provided written advice regarding her role but understood that it was not to document deficiencies but to provide support.

The Panel heard that it was teacher 3's role to observe the teacher's Work Program. She said that she didn't check the program for accuracy in relation to curriculum but rather looked at it from a CRT's position. In particular, she wanted to check that the programs

were detailed enough so that a CRT would know what work the students were required to do. Teacher 3 stated that the teacher was concerned with confidentiality and that other teachers might become aware of the support group so it was agreed that teacher 3 would sign the back of the page.

Teacher 3 stated that the program for week 6 May 1<sup>st</sup> – 5<sup>th</sup> provided by the teacher was not the document she saw and signed the back of, on May 4<sup>th</sup> and no other weekly plans correlated with her description of what she saw on 4<sup>th</sup> May. She said that she noted in her diary that there was not enough detail in the teacher's program for the Friday.

The Panel heard that the teacher was extremely negative throughout the monitoring period. Teacher 3 said that whenever she offered help or support, the teacher would respond defensively and be in complete denial. She stated that there were a number of examples of the teacher not following through with suggestions or advice including not getting the students back in time for safe dismissal. Teacher 3 said that she may well have had reason the first time but not on subsequent occasions.

Teacher 3 explained to the Panel that the Reading Recovery waiting list is prepared at the beginning of each year and is based on teacher assessments at the end of the previous year. Students are then chosen and receive half an hour one on one teaching every day. The program allows for only 8 students to be covered each year. Teacher 3 said that due to the teacher's inaccurate assessment of two of her students they were not tested and therefore missed out on a coveted place in the program.

Under cross examination teacher 3 acknowledged that she did not have a checklist of professional standards to share with the teacher and work through with her and therefore there were no clear standards outlined for her. Teacher 3 told the Panel that she had never raised with the teacher the issue of her having a messy and untidy room with scraps of paper being left on the floor. She said that this was one of the issues that went to organisation. On one occasion, the teacher had requested a meeting with teacher 3 but failed to keep the appointment. Teacher 3 said that she had specifically waited at school and then tried to find the teacher without success. The teacher told her the next day that she had left a message with teacher 3's daughter that she could not meet with her but teacher 3 believed it was incumbent on the teacher to have told her personally.

#### **Teacher 4**

Teacher 4 gave evidence under oath and confirmed her written statement as true and accurate. She is a Year 4/5 teacher at the school. She qualified as a teacher 1968 and has taught since then although having some time off for family and other leave. She said she returned to the school in Terms 1 and 2, 2005 to replace the teacher who was on sick leave.

Teacher 4 told the Panel that she was a member of the support group and that she had very little knowledge of or contact with the teacher prior to this. She said that she had never been part of a support group process and that the principal told her of her role

and emphasised that it was to be a supportive process. The Panel heard that teacher 4's role was to provide support in the areas of commitment to student welfare including student management and supervision and discharging duty of care.

She could not recall whether or not the principal gave her any written guidelines regarding the process but stated that she would have thought about it and would have set some ground rules. The purpose of the support group as she understood it was to support and help the teacher. She did not set out to gather negative information. She said she believed the process would be successful and the teacher would be teaching.

Teacher 4 said that in 2006 the teacher took her class for PE so that gave her the opportunity to observe her teaching. She said that on one occasion some of her students returned to class from PE asking for the key to the sports shed. She told the Panel that by this stage of the lesson she would have thought that the equipment would already have been out and set up. This indicated to teacher 4 the lack of organisation in the teacher's PE classes. Added to this, the Panel heard, was the fact that there was insufficient equipment provided. As an example, during one lesson only one skipping rope was provided which meant that many students spent a large part of the class simply not participating.

Teacher 4 stated that she observed students refusing to participate in PE classes, wandering off from the lesson, jumping on each others backs, talking, not listening and so on. Teacher 4 said on occasions she observed the teacher's students being unsupervised and that the inappropriate and inattentive behaviour was not acted on by her. She told the Panel that a basic piece of equipment for a PE teacher is a whistle and early in the monitoring process she recommended to the teacher that she obtain one to assist in controlling the class. It wasn't until much later that she did so. Teacher 4 said that as PE teacher the teacher was responsible for organising the Jump Rope for Heart activity. On the day of the event the teacher was absent and no documentation of the arrangements could be found. She stated that the teacher should have been working with the House Captains prior to the event so they would know what their responsibilities were. This lack of preparation and organisation impacted on other staff who then had to improvise arrangements for the event.

Teacher 4 told the Panel that there was one occasion when she was asked by the teacher for her students to help pump up balls for the PE class. She was upset about this as it was important that her students did not miss out on any of their class work but she did agree to it one time only.

She and the teacher had weekly meetings and she made herself available for these. Teacher 4 thought she and the teacher got on quite well.

When Counsel Assisting showed two documents outlining the arrangements and program for the Jump Off Day, teacher 4 said that she had never seen the documents before.

Under cross examination teacher 4 told the Panel that she did not see nor was given a set of professional standards to work through with the teacher.

## **Teacher 2**

Teacher 2 gave evidence under oath and confirmed her written statement as true and accurate. She told the Panel that including training she had been a teacher for 37 years and had experienced a range of teaching experiences in a variety of schools. Currently she is a Leading Teacher at the school responsible for the senior school and literacy. She also acts as principal in the principal's absence.

Teacher 2 stated that 2005 was her second year at the school. She was a Prep teacher and co-ordinated the Prep, and Years 1 and 2 department. She said that it was her responsibility to oversee the implementation of the employer's Early Years literacy program and as part of this role she would coach and work with teachers on developing strategies.

The Panel heard that in July 2005 the teacher returned to school after having been absent on WorkCover and took over her Prep class. Teacher 2 then worked as assistant principal, literacy support co-ordinator, and in various welfare roles, including helping students at risk. She told the Panel that she gave the teacher all the curriculum documents that covered the yearly and term plans for literacy, numeracy, and integrated studies and discussed the students with her. She said that the principal wanted her to be around the teacher's class every day but she wanted to give the teacher some space to develop her own relationships with the students. Teacher 2 said that she had a feeling that the teacher didn't really want her in the class.

Teacher 2 told the Panel that in the 2nd half of 2005 on every Tuesday morning she worked in the adjoining Year 1 / 2 class to the teacher so she was able to observe her classes at least once a week. She said that she also worked with the teacher in a literacy support role and modelled literacy teaching in the class on approximately 5-6 times over the 6 month period. She said that she had professional conversations about literacy block activities when working with the teacher.

Teacher 2 described the 2 hour literacy block as "pretty full-on, uninterrupted, intense, prime teaching time". She said the literacy block follows a consistent formula called the Early Years Literacy Program. Within this structure children are usually brought together for the first 10 minutes then divided into learning centre activities, while the teacher works with a specific group on Guided Reading where students are matched to a text level. Throughout this time parent volunteers are assisting with individual reading. A similar structure is used in relation to writing. Teacher 2 stated that in the teacher's class parent volunteers often complained that her literacy block did not start until 9.20 or 9.30 meaning valuable time was lost which adversely affected the students' progress. Although the school had this set policy for the structure of the literacy block, the teacher's response was that she had a different, and no less valuable or effective approach to literacy. She had also given an assurance to the principal and teacher 2 that she had done all the Early Years training at other schools.

She said that the teacher would often have a show and tell activity in the literacy block and although this is a valuable activity it is more common to run it in the afternoon so as not to take time away from the literacy block. Teacher 2 told the Panel that she

believed the show and tell activities further highlight the teacher's lack of understanding of literacy and that it was an activity used because of a lack of planning. She stated that the teacher had a very scant outline for a lesson and gave as an example the teacher recording "game" in her program with no guidelines as to what game it was. Another example was no detail in her literacy program where she had written "text" but there was no mention of what the text was or how it was to be used, or any detail included for the children's activity groups. She said a similar situation existed for the maths program. Teacher 2 said that although what the teacher had provided in the hearing papers is more detailed than the work programs that she provided to her, there is still not enough detail for a relief teacher to be able to follow.

Teacher 2 told the Panel that the teacher's lack of planning, structure and organisation also meant that she failed to extend and develop students' knowledge and skills. She said that the teacher did not regularly check or change the word lists that went home in the readers, consequently parents came to teacher 2 asking for more advanced words, etc. as their children were not progressing with their reading. Teacher 2 spoke to the principal about her concerns and they subsequently met with the teacher to clarify areas for improving her performance. The lack of progression of the students' literacy is also reflected in the literacy benchmarking of the teacher's 2005 Prep class. Teacher 2 explained to the Panel the process involved in benchmarking and stated that the Preps had not progressed from when she tested them in July 2005. She stated that when she benchmarked the students in November 2005 and compared the results to the teacher's assessments they differed and were not as positive as the teacher had recorded. She believed the teacher's benchmarking to be inaccurate and incorrectly interpreted which was borne out when in early 2006 the students' benchmarking matched that of teacher 2's. An example of inaccuracy and incorrect interpretation of the process is the teacher recording a student at Level 5 with 75% accuracy. Teacher 2 pointed out that to be assessed as operating at a particular level a student must be reading at between 90-100% accuracy. She acknowledged that students might fall back over the holidays but not enough to explain all the discrepancies.

Teacher 2 told the Panel that in the first half of 2005 she had worked hard to give the Prep students a foundation for basic knowledge of literacy and numeracy and by the start of Term 2 in July they were working well. She said that when she observed the teacher's classes the students were generally undisciplined and were not closely monitored by the teacher. As an example she stated that children would run around the classroom or roll around on the floor while the teacher was distracted with something else. Teacher 2 said that she sometimes disciplined the students and got them back onto task often without the teacher being aware that she done it. She said that often the concertina doors between the teacher's class and the Grade 1/2 classroom had to be closed because of the noise levels from the teacher's room.

The Panel heard that the teacher had difficulty managing one student in particular, CD, who had behavioural as well as intellectual issues. Teacher 2 confirmed that the teacher did not implement Hospital A's star chart system and that the chart disappeared at some stage. She said a star book was initiated but this too disappeared. Teacher 2 said that if CD was upset he would often run away. She said on one occasion she found him

in a cardboard cubbyhouse and obviously the teacher did not know he was missing as she was very surprised when teacher 2 had found him.

The Panel heard that in 2006 the teacher was not adequately preparing for her PE classes so teacher 2 met with the teacher to assist in planning. She said that on several occasions she offered her support to prepare for PE but the teacher was not forthcoming in accepting the offer. Teacher 2 asked to see the teacher's PE term planner but was told it was on her laptop and it was not until week 9 of Term 2 that the teacher produced it. Teacher 2 said that the document produced was not adequate in that it contained insufficient activities and failed to cater for a range of age groups. She stated that the assessment the teacher used for PE was lacking in detail and context.

Teacher 2 told the Panel that she had never been part of a monitoring group before but that the principal had shown her the employer's document outlining the process. She believed that the teacher would get the support she needed and she would improve; however she didn't take on the opportunity to improve her teaching. She said that "the whole process was really quite awful, tense". She said that as acting principal in June 2006 she acted upon the principal's preliminary view that the teacher was not performing to the required standard and recommended to the officer of the employer that an inquiry be commenced.

Under cross examination teacher 2 acknowledged that the Jump Rope Day is held every year and that details of the program were discussed at staff meetings. She told the Panel that she had not seen the program outline provided by the teacher in the hearing papers before but conceded that it was the usual program followed.

### **The teacher**

The teacher gave evidence under oath and confirmed her written statement in the AEU folder as true and accurate with the alteration of changing Paragraph 26 to 35a. She told the Panel that she has been a foster care worker for the last 6 months. Prior to this she was a teacher having graduated in 1982 and working in various rural schools until taking up a position at the school in 2003.

The teacher told the Panel that she incurred a back injury in 1997 and suffered a relapse in 2002. At first it seemed a simple disc injury but was eventually diagnosed as more than that, resulting in a 3 month recovery. As there was no position available at school 3 she applied for an on-going position at the school to be taken up in 2003. The teacher said that despite her qualifications, experience and seniority the principal deemed her 'unsuitable' for the position. She said that on appeal the Merit Protection Board overturned the school's decision and the teacher was appointed to the school.

The teacher said that she again suffered a relapse with her injury and was unable to take up her position at the school until gradually returning to work as a Year 5/6 teacher in Terms 3 and 4, 2003. As part-time work was not available and she had been given the all clear by her physicians to work fulltime in 2004, she did so in a Year 5/6 class, although her time fraction was reduced to 4 days a week for Terms 3 and 4. The teacher told the Panel that the lingering side effects of the injury caused the occasional relapse

and short periods off work. The teacher said that due to her back injury she was unable to return to work in 2005 until Terms 3 and 4 when she took over teacher 2's Prep class.

The teacher told the Panel that the extreme displeasure of the principal at her apparent inability to get the teacher to 'go away', meant that she was often treated as persona non grata within the relatively closed community of the school. She said that there were many ways in which this subtle form of ostracism was manifested. For example, she said that she was led to believe that she was to have responsibility for a Year 3/4 class as well as being unit leader but this was changed to a Prep class prior to her resumption of duties. Also she had her former role as science teacher taken from her and given to another staff member. The Panel heard that the principal was reluctant to see the teacher unless another staff member was present.

The teacher stated that it was against this background of ill-disguised antipathy, an overly censorious approach to her teaching methods, wedded to an unsympathetic response to her long-term medical condition, that the principal's management of her performance reviews must be understood.

The Panel heard that isolated events from the recent past, which at the time that they are said to have occurred had never been brought to her attention, suddenly materialised into allegations of poor curriculum planning and poor management of students. She said these issues always arose in retrospect they were never spoken of at the time things happened.

The teacher stated that the principal wrote to her requesting a response to a complaint that the teacher had not supervised the students at the swimming program and had used her laptop while the students were in the pool. She said that she was surprised that she hadn't been asked for her side of the story before the situation got to a formal stage. She told the Panel that that was the first time she had used her laptop at the pool as on many other occasions she was in the water with the students. She said that she was disappointed with herself for taking the computer to the pool but she needed to finish a report for a meeting after swimming. The teacher said that she wasn't told it was wrong to take the laptop to the pool but she should have sought advice prior to using it.

The teacher told the Panel that when she received notification that her performance was to be formally monitored, she was overwhelmed with feelings of anxiety, betrayal, and deception. She said that when she was given the PE class she felt things were unfair and that she had been set up to fail. She had a lack of experience in the field and was not PE trained. She said that other than the Grade 1/Prep PMP program she was given no PE materials and information regarding cluster programs or inter-school sport. She stated her physical state put limitations on her ability to demonstrate, set up and pack up materials, and stand up for lengthy periods. She felt that in an unfamiliar curriculum area it was going to be hard to demonstrate competence.

The teacher stated that it wasn't true that she was difficult to work with. She said that prior to the monitoring period she had no real problems with communicating but once

the support group started she did react negatively to it. In relation to her alleged inability to manage or develop a relationship with CD, she said that she worked with him differently than others did and used her Special Education training for strategies. She told the Panel that although she had no involvement with Hospital A, she had received a copy of the hospital's report but didn't realise that it was mandatory to follow the recommendations. The teacher said that she didn't use the star chart system as she was using her own system but that once it was brought to her attention she implemented it. The teacher stated that the chart went missing when she was on leave. In relation to the hospital's reward system, the teacher said that CD's behaviour was becoming more extreme so she spoke to other teachers about this and decided not to use the star chart until the next year.

The Panel was told that in relation to one of her students, KL, not having read enough books, the teacher said "a pity teachers didn't come to talk to me about it!" She explained to the Panel that KL's home life was very stressful as her father was dying and the teacher didn't want to be an extra burden to the family by being in contact with them. As KL was absent more and more it meant that fewer books were going home.

In response to various allegations the teacher said that not one teacher ever made a complaint to her regarding noise in her classroom. She said that in relation to her PE lessons "some went well some didn't" and that she changed the lesson plans when appropriate.

With regard to AB, the teacher stated that she tried to assist him in the classroom, and although his eyesight was a problem sometimes, he could mainly read what was provided. She said that occasionally he needed work enlarged and so it was done on an as needs basis. She stated that aide 1 never discussed with her any of his concerns. The teacher told the Panel that she received a letter of support from AB's parents.

The Panel heard that the teacher had had Early Years training at previous schools and felt confident that she was assessing appropriately. She told the Panel that teacher 2 at no stage provided or brought to her attention the availability of a disc or the assessment processes.

The teacher indicated to the Panel that she acknowledged and accepted the deficiencies in her professional practice that led to her dismissal from the employer. She stated that from the moment she appeared at the school following her successful appeal to the Merit Protection Board, she was left with the clear impression that the outcome of her grievance had not been accepted with good grace by the principal. She also felt that some other staff had greeted her arrival with undisguised antipathy, as her transfer had led to a well-liked member of staff reverting to a temporary position.

In the teacher's written statement she said that she doesn't wish to minimise or criticise the Disciplinary Appeals Board's comments on her effectiveness and competency as a teacher but she felt that the process was unfair and that she was never going to come out of it without deficiencies. The teacher said that she wasn't the same person that she was earlier in her teaching. She explained that she had become grumpy, defensive, abrupt, and was not working as well as she should have. The teacher told the Panel that

in the years since the Board's decision she has reflected on the unsatisfactory aspects of her past practices, especially the lack of insight into her professional shortcomings. She said that she now fully understands the consequences of failing to follow through with curriculum planning, of failing to work collaboratively with colleagues, and the necessity to adopt recommended strategies for classroom management and to manage challenging students. The teacher said that she has undertaken a number of professional development activities, engaged in further education, and sought short-term employment to regain confidence and develop coping strategies.

Under cross examination the teacher conceded that her planning was not recorded in enough detail although she maintained that she did have Work Programs for her classes but that they were not always hard copies or at school. She said that she was disappointed that teachers, teacher aides and integration aides didn't talk to her about her lack of communication but acknowledged that as the classroom teacher she should have approached them about her program and what was required of them.

The teacher told the Panel that because she and teacher 1 were rarely at the school at the same time they were not able to plan together so they ran their own program. The teacher said that not providing a work program for teacher 1 would not have been detrimental as teacher 1 is an experienced teacher who would have advanced the students. She said that although teacher 1 left notes for her she didn't realise that communication would have been improved if she responded.

In relation to teacher 3's evidence that the Work Program in the hearing papers is not the Work Program that she sighted and signed the back of, the teacher denied that she worked up more detailed Work Programs after she saw the allegations against her. She said "No, I did not. If so I would have made them more detailed!" She said if a closer look was taken at her Work Programs they become more detailed as the monitoring process continues. The teacher told the Panel that she had not been asked to look for the originals before the Hearing but gave an undertaking to search for the originals and provide them if she can.

The teacher acknowledged that she took too long to settle students into the literacy block although it was more like 5 minutes not 20-30 minutes. She added that she worked the literacy block as required. In relation to noise levels and poorly behaving students, the teacher said that she couldn't recall any occasions when it was as bad as other teachers stated. She told the Panel that there were only two students who would have rolled around the floor and one of those, CD, is now at a Special School. She stated that at the time she needed professional development regarding strategies to deal with classroom management. The Panel heard that the teacher changed her PE program to include a skill and game component once she had conferred with an experienced PE teacher.

The teacher told the Panel that she worked on her laptop at the swimming pool for only 10 minutes. She said that other teachers shared responsibility to supervise students and that others were "given some slack" but she wasn't. The Panel heard that as CD had never wandered away from her room before she was not expecting it and was surprised

when he was brought back to her room. She maintained that she did start looking for him once she realised he was missing.

The teacher stated that she could have had a more positive approach to the monitoring process but she also felt that it was handled negatively by the panel appointed by The principal. She said that the criticisms were one after the other after the other and that she wasn't used to it. She said that since her dismissal however she has had very positive experiences in her work as a Welfare Worker where she has asked for advice and suggestions to improve. She has worked very hard at organisational skills and has attended a large range of professional development activities including positive behaviour management in the classroom.

She said that training and professional development she has undertaken since her dismissal has helped her improve her deficiencies in classroom management, organisational skills, communications with colleagues, and planning curriculum.

## **DISCUSSION OF THE EVIDENCE**

The Panel had the task of determining whether the evidence demonstrated that the teacher was seriously incompetent and/or not fit to teach.

The allegations in this matter collectively amount to a collection of failings that by themselves may be considered trivial but if taken together can, in the Panel's view, amount to serious incompetence. What must be considered in this matter is the teacher's understanding of her failings and her capacity and willingness to improve her competence and thereby demonstrating her fitness to teach.

The Panel is mindful that the teacher of necessity had to have substantial time off work due to a back injury sustained in the course of her employment. The Panel is also mindful of the effect that this condition had on her physically, emotionally and psychologically. However, in the Panel's view, while the teacher was undertaking her teaching duties after a clearance from her treating health professionals during the years 2004 to 2006 it was incumbent on her to demonstrate a level of professional performance in her teaching duties.

The allegations that must be addressed by the Panel include:

1. Failure to plan and prepare adequately for lessons
2. Failure to structure lessons adequately
3. Failure to demonstrate appropriate classroom management
4. Failing to supervise students adequately and create a safe environment for them
5. Failing to cater for students with special needs
6. Failing to assess students appropriately
7. Failing to demonstrate collegiality with other staff members
8. Was disorganised and unreliable
9. Continuing to be disorganised and unreliable.

These allegations collectively, during the period from 2004 to 2006 demonstrate to the Panel the gravity of the concerns that the school had in the teacher's case. The Panel is mindful that the teacher was not new to the profession at the time of these allegations, and given her knowledge and experience, it was reasonable for the school to expect her to have sufficient skills to undertake her duties when she commenced employment at school 1 in 2003.

#### 1. Failure to plan and prepare adequately for lessons

In relation to the first allegation, evidence provided by witnesses for the Institute demonstrated, in the Panel's view, a number of instances where the teacher failed to plan and prepare for classes. It was established that she did not provide Work Programs to aide 1 or to teacher 1. While the absence of Work Programs do not necessarily go so far as to establish that the teacher did not plan her classes, the inference that can be drawn is that of a teacher who is not organised and does not plan for someone else teaching in her absence to ensure a continuity of the curriculum.

The teacher's Work Programs contained in the Book of Evidence were not adequate in the Panel's view, especially to the level expected from an expert teacher. The Panel acknowledged that during the monitoring period there is evidence that the teacher's Work Programs did improve, however not to the standard required of an experienced teacher. The Panel observed that Work Programs are not merely an administrative function but very important tools in assisting to properly prepare and deliver the approved curriculum in the classroom. The importance of adequately prepared and detailed Work Programs are essential especially when other teachers have to take over teaching a class, which was often the case here, teach in tandem with the teacher (as in teacher 1's case), or in explaining to a teacher aide the purpose of a lesson for special needs students.

There was a question raised during teacher 3's evidence as to the veracity of a Work Program produced by the teacher during the employer's investigation and later provided to the Institute was not the same as the one initialled by teacher 3 in Term 2, 2006.

The teacher was asked to provide to the Institute the original of the Work Program. Teacher 3 was a member of the support group who had the responsibility of reviewing the teacher's weekly Work Programs during her monitoring period in 2006. The teacher had requested that teacher 3 sign the back of her Work Programs and teacher 3 agreed to do so and signed the back of some but not all of the weekly Work Programs during the monitoring period. In her statement for the Disciplinary Appeals Board, teacher 3 attached a copy of the Work Programs produced by the teacher in her response to the Notice of Allegations. In her evidence to the Disciplinary Appeals Board and repeated in her evidence to the Panel, teacher 3 stated that the Work Program for Week 6, 1 to 5 May 2006 was not the document that she had viewed on 4 May 2006. Teacher 3 was sure that the documents were not the same as she had kept contemporaneous notes. Also for 5 May 2006 there was no description of the explanation text, and Nelson Unit 7 was planned for maths, while the program produced by the teacher in her response, specified the explanation test and planned Units 10 and 18 for maths. This explanation

by teacher 3 was not challenged in cross examination and the inference is that the teacher substituted a more detailed Work Program for the one she actually produced in the week 1 to 5 May 2006. This point had also been raised by teacher 3 during the Disciplinary Appeals Board hearing in June 2008.

The teacher denied submitting a more detailed Work Program in response to the employer's investigation and stated that if she had substituted a more detailed Work Program for the ones she had actually produced at the time she would have included more detail in them. The teacher did not provide an explanation about the discrepancy between the Work Program produced to the Institute and teacher 3's contemporaneous notes.

The teacher was asked to produce the original Work Program prior to the hearing and again after the hearing; however the teacher notified the Institute through her representative that she was unable to locate this.

In a further submission to the Panel after the hearing, the teacher's representative argued that it remained open to the Panel to accept the teacher's "unequivocal evidence under oath" that her 2006 physical education Work Program document included among the materials in the Hearing Book is the same document she used in the 2006 monitoring period. He submitted that teacher 3's inadequate understanding of her role in modelling good practice during that monitoring period as underscored by the decision of the Disciplinary Appeals Board in 2008 must place a question mark over her motives in challenging the authenticity of this document. He also submitted that consistent with Part 2.6.48(c) of the *Education and Training Reform Act 2006* the Panel is entitled to discount any legal shortcomings in the teacher's ability to discharge an alleged evidentiary burden in relation to the veracity of this document by informing itself in any way it sees fit on the seriousness or otherwise of this matter. He refers to the "incontrovertible fact" that teacher 3 acknowledged that the teacher produced a relevant Work Program in the first week of the monitoring period commencing 29 March 2006 and at this time the teacher was "justifiably wary" of teacher 3's notion of "support" and thereafter insisted on having the program signed. He goes on to submit that teacher 3 gave evidence that she viewed the document on subsequent occasions and was told it was also stored on the teacher's computer, but that the document produced at the hearing was not the one she recollected signing on the back and presumably scanned during the week 5 of the monitoring period in early May 2006. He submitted that the Panel should have all these facts in the forefront of its mind before drawing a negative inference in respect of the teacher's inability to produce at the hearing the original, signed document relating to Week 5 in May 2006. It is unreasonable to expect the teacher to have such a document in her possession, control or custody over four and a half years later and the Panel should not accord significant weight to this issue, especially in light of the teacher's testimony that she now recognised and accepted the gravity of her earlier failings in related matters. The teacher conceded that her attention to detail in preparation and presentation of Work Programs and the like was seriously lacking and this unfortunately persisted during the "flawed monitoring process."

The teacher's representative also submitted that during the monitoring process in 2006 the state of affairs was difficult to turn around given that her communication and collaboration with teacher 3 and other members of the professional support group was minimal. The whole process was "marred by suspicion, and the unrelenting criticism of her by the monitors, which ultimately gave rise to a sense of disillusionment."

According to Counsel Assisting, the teacher's failure to produce an original Work Program leaves the evidence in relation to this point in an unsatisfactory state from which the Panel can draw two conclusions:

- the Panel could find that in her response to the Notice of Allegations that the teacher substituted a more detailed Work Program for the one she actually produced in the week 1 to 5 May 2006; or
- the Panel could find that teacher 3 was mistaken and the Work Program in the Book of Evidence was the one teacher 3 saw on 4 May 2006.

In relation to the second option, unfortunately this was not explored during teacher 3's evidence. However the Panel notes and accepts that teacher 3 took meticulous notes during the monitoring period in 2006 and was certain that the Work Program submitted as part of the evidence in this hearing was not the one that was given to her for signing on 4 May 2006.

On balance the Panel accepts teacher 3's evidence that the Work Program she signed in May 2006 was not the one included in the Book of Evidence. This gives rise to doubt, in the Panel's view, about the reliability of the teacher's evidence on this point. The Panel has some misgivings about the Work Program in question but was unable to conclude that it was in fact substituted, especially given the passage of time. The Panel therefore determined to give the teacher the benefit of the doubt.

For the reasons set out above the Panel concluded that the teacher failed to plan and prepare adequately for lessons as outlined in Allegation 1.

## 2. Failure to structure lessons adequately

This allegation in the Panel's view follows on from the teacher's failure to plan and prepare adequately for lessons. There was an abundance of consistent evidence on this point by all the witnesses that the teacher did not follow the set program for early years teaching. The evidence showed that the teacher regularly and consistently started her classes late and inappropriately used the time when literacy blocks were to be scheduled for show and tell. This was despite the fact that literacy classes were modelled for the teacher by teacher 2 and she failed to take this training on board. In relation to the PE classes, the Panel noted the teacher was unfamiliar with this topic and had taken steps to inform herself by visiting other schools and speaking to PE teachers there. However despite this, improvement in her management and structure of these classes was not as great as should be expected from a teacher of her experience. Fundamental to preparation for a PE class is being prepared and having equipment ready before the class to maximise students' physical activity. Preparation for classes is a fundamental standard to teaching.

The Panel was concerned about the impact that failing to adequately plan and prepare lessons as well as failing to structure lessons adequately had on the teacher's students and colleagues, in particular, teacher 1 who was teaching the teacher's class on Fridays. The lack of consistency, continuity and cohesion compromised the learning environment for the students and resulted in dissatisfaction for those having to take over the classes. The lack of preparation also disadvantaged students with special needs as well as the teaching aides who were present to assist in their learning. The purpose of being adequately prepared for lessons and having relevant material available to others who jointly teach a class, who assist with students with special needs or in the event of a teacher's absence, has to take over is crucial. Planning and preparation ensures continuity, an integrated approach to learning and the least disruption to students' routine and learning.

The Panel finds that the teacher failed to structure lessons adequately and Allegations 2 is made out.

### 3. Failure to demonstrate appropriate classroom management

There was compelling evidence by witnesses that the teacher's classes were noisy and she often appeared not to be adequately managing her classroom. Evidence was also given by a number of the witnesses about the state of the teacher's classroom at the end of the day in that it was particularly untidy. The teacher acknowledged her deficiency in keeping noise levels to an acceptable level and that she could have been tidier.

The teacher also acknowledged that her PE classes were not especially interesting or engaging. The Panel accepts that the teacher was not particularly pleased to have been allocated this class and had to take some time to learn what was required. The Panel also acknowledges that the teacher had concerns about the physical activity she was required to do for this class and her concerns about the impact this may have had on her back condition, despite having an all clear by her treating doctor. However, strategies were suggested to her by other teachers about better managing these classes and the teacher also on her own evidence, visited other schools to get a greater understanding of the types of approved activities and how other PE teachers structured their classes. The Panel considered the teacher could have implemented this advice to greater effect, particularly as an experienced teacher.

The Panel finds that Allegations 3 is made out because the teacher failed to demonstrate appropriate classroom management.

### 4. Failing to supervise students adequately and create a safe environment for them

Again there was consistent evidence given to the Panel that the teacher failed to supervise her students adequately and did not create a safe environment for them. This was particularly so in the case of a special needs student. In addition, the Panel heard evidence that the teacher's students were allowed to leave the classroom to work elsewhere without her ensuring that they were adequately supervised. At the hearing the teacher indicated that she allowed the students to go to the library and assumed

that there would be supervision there. The teacher did not indicate that she had organised this with the librarian and other teachers gave evidence that on the occasions when they had to teach her class, students expected to be able to leave the classroom without comment.

The other example of failing to supervise students that was given at the hearing was when the teacher took a class to the swimming pool and used her laptop during the swimming class. She told the Panel that there were others there who were supervising other students as well as a teacher aide and a parent and she assumed they would also be able to supervise her students. This in the Panel's view does not indicate that the teacher had insight into students' safety and her duty of care and nor does it demonstrate her accepting responsibility for her actions.

The Panel considers that the teacher should not have taken her computer to the swimming class, no matter what the reason and she admitted that she should not have done so. The Panel also considered that the responsibility for supervision of the students at the time of taking the students to a swimming class was not totally the teacher's responsibility; the school should have rules and procedures in place for swimming classes to ensure adequate supervision. The principal told the Panel that she saw the teacher going to the swimming pool with her class and did not know that this had been planned. The principal did not stop her despite the fact that she had concerns as to there being adequate supervision due to an industrial dispute on that day. According to the principal's evidence, by this stage she was also having concerns about the teacher's competency. The Panel accepts that the teacher had the major responsibility for ensuring supervision of her class at the pool, but the school also has to take some responsibility to ensure there are properly documented and communicated protocols for students attending the pool and adequate supervision and support for them and the teachers.

Another instance cited by aide 2 was the use of a trampoline as part of the teacher's PE class where there were no mats placed around it. This was, in the Panel's view negligent as the chances of injury are high. The Panel was concerned that the teacher did not think through the consequences of not having mats around the trampoline which was placed on concrete.

The Panel finds that Allegation 4 is made out because the teacher failed to supervise students adequately and create a safe environment.

##### 5. Failing to cater for students with special needs

The Panel considered that the teacher failed to communicate with aide 1 and aide 2 who were teacher aides for students with special needs in the teacher's class. Both aide 2 and aide 1 described a complete lack of communication in relation to planned activities during classes in order to be adequately prepared. This showed lack of insight into the special needs that some students have in the classroom as well as a lack of understanding of the role of teacher aides. It also demonstrates the teacher's failure to develop relationships with the teacher aides and the students themselves. This is most surprising in a teacher of the teacher's experience.

In relation to CD, a special needs student with an intellectual disability and behavioural problems, a reward system had been recommended by Hospital A after assessment by specialists. However it appears that the teacher did not take this very seriously as the system recommended appears to have lapsed early on. The teacher gave evidence that the star chart disappeared and she then devised and provided an alternative reward system, despite a perfectly reasonable system that had been recommended by specialists. This alternative was not, however communicated to other teachers who were responsible for CD when the teacher was not present. The evidence by all the witnesses was consistent that they did not see an alternative system developed and implemented by the teacher. Indeed there was evidence given that CD regressed under the teacher's care.

The Panel finds that the teacher failed to cater for students with special needs and that Allegation 5 is made out.

#### 6. Failing to assess students appropriately

There was concern raised by teacher 2 in particular as well as the principal that the teacher failed to assess students appropriately. In relation to the literacy program the teacher certainly displayed some disregard to the accepted structure of that class and this may have impacted on the students' reading levels. However, in the Panel's view there may be other factors that contributed to these. There was evidence given as to the discrepancy in the results in students' literacy levels taken before and after that class but there was no evidence proffered that the teacher was directly solely responsible for these results. The Panel noted that the teacher had this class for approximately six months and this class had previously been taken by teacher 2.

In relation to the PE class, the Panel has already noted that the teacher was unfamiliar and inexperienced in this area. Her back injury was a factor and she requested not to have this class. She was clearly struggling with this class and the Panel accepts that she did not perform to the requisite standard. The teacher clearly did not appreciate that every PE class had to include a skills component.

The Panel finds that Allegation 6 is not made out. The Panel considered that while there were some concerns in relation to the teacher's ability to assess students appropriately, the evidence was inconclusive in attributing the results of the literacy assessment of students solely to her. The Panel also considered there were some extenuating circumstances in relation to the teacher's conduct of her PE class.

#### 7. Failing to demonstrate collegiality with other staff members

In the Panel's view the evidence presented by the teacher's colleagues confirms that she had failed in demonstrating collegiality with other staff members. The teacher gave evidence that due to the nature of her having gained the position and her ongoing health problems contributed to her not feeling included in collegiate relationships with the school's teaching staff. The Panel has addressed the lack of communication and lack of relationship between the teacher and her aides as well as with Teacher 1 who was taking her Friday class. The teacher failed to appreciate the importance of these

relationships and the importance of communicating regularly with the teacher aides as well as with the teacher who was in effect teaching in her place, thereby failing to ensure continuity of lessons.

The Panel finds that Allegation 7 is made out and that the teacher failed to demonstrate collegiality with other staff members.

#### 8. Was disorganised and unreliable

The Panel was satisfied on the evidence presented by the teacher's colleagues, the teacher aides and the principal that the teacher was fundamentally disorganised, unreliable and continually left her classroom in an untidy state. Her lack of organisational skills and planning severely affected her colleagues and her supervision of her students. Her inability to manage the noise levels in her class also caused concern among her colleagues. Examples were given of missed yard duty and not effectively communicating her plans for the Science Night.

Allegation 7 is made out because the Panel finds that the teacher was disorganised and unreliable.

#### 9. Continuing to be disorganised and unreliable

The principal's evidence that after the performance review in 2005 was that the teacher did not appreciate or take to heart that her performance was not up to standard. The teacher acknowledged that she was suspicious and grumpy and had become negative in her attitude towards her work and her colleagues. She was not open to hearing or acting on constructive criticism as she viewed this in a negative and highly suspicious way. The teacher was clearly struggling with coping in her personal and professional life and this may have been due to her health or to her perception that she was not welcome at the school. After the performance review and particularly when the monitoring period commenced instead of both of these being supportive, they became adversarial in nature further exacerbating the teacher's perception of how she was perceived. The Panel considered there were significant shortcomings in the performance appraisal and monitoring process that was put in place by the principal. Despite the good intentions of the support group, there was little guidance and a lack of a robust structure to make this process more positive. This situation was in turn exacerbated by the acting principal's refusal to institute a further monitoring period despite the employer recommending this. The Panel concluded that this allegation was made out and the teacher had continued to be disorganised and unreliable.

In summary the Panel notes that the teacher had come from a very small country school and the change in her workplace may have seemed more challenging for her. However, the Panel was concerned that the teacher did not demonstrate a skill level commensurate with her years of teaching, in particular her problems with planning lessons and her classroom management were fundamental skills and these have been shown as having been deficient.

## FINDINGS

The Panel had to determine whether the teacher's conduct and competence as a teacher amounted to serious incompetence and/or unfitness to teach. In considering this the Panel recognised that the intention in such proceedings is not to punish the teacher, but to maintain proper standards of conduct and competence for the profession, to protect the reputation of the profession and of course to protect the public (*Ziems v the Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279. In its deliberation and decision the Panel must be satisfied based on the evidence that the teacher is seriously incompetent and/or not fit to teach as set out in sections 2.6.46(1)(b)-(c) of the *Education and Training Reform Act 2006* (the Act).

### *Serious incompetence*

The Panel noted the case of *Moran v Victorian Institute of Teaching* [2007] VCAT 1311 where the Tribunal considered the meaning of the term "seriously incompetent". The Tribunal states [at paragraph 46 – 47]:

" ...

47. *What is serious incompetence? A simple error of judgment, or a simple negligent act, is not sufficient to constitute serious incompetence. There are a few decided cases on this issue. Some of these cases were referred to by the Panel in its Reasons for Decision and adopted by the Respondent in its submissions.*

48. *In Zechner v Department of School Education 1999 FCA 445 a teacher was found to be incompetent as he was:-*

- a. *Unable to implement meaningful lessons;*
- b. *Unable to communicate ideas or information;*
- c. *Unable to develop rapport or confidence with students;*
- d. *Not trusted by parents or other teachers to perform the duties of a teacher;*
- e. *Poor relationships with colleagues;*
- f. *Unable to maintain teacher – student relationship;*
- g. *Deficient in knowledge of the curriculum;*
- h. *Unable to see the need to improve teaching skills.*

...

51. *The cases to which we were referred establish:*

- a. *That serious incompetence need not result from criminal conduct;*
- b. *That the incompetence must be of such a degree or so frequent that it reflects on the teacher's fitness to teach;*
- c. *That whether conduct amounts to serious incompetence will depend on the facts of each case;*
- d. *A teacher may still be judged to be seriously incompetent even though the events in question have arisen by reason of a lack of support..."*

If a teacher's practice were such that it would defeat the cause of imparting knowledge to students then the teacher would be seriously incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the

teacher has been guilty of negligence or incompetence in a professional capacity, which has been to such a degree or so frequent to reflect on the teacher's fitness to teach, then the teacher would be seriously incompetent *Glynn Brown [2005] VIT 19*.

In the matter of the *Robyn Gordon [2009] VIT 92* the Panel in that case noted that serious incompetence in a teacher needs to be more than shortcomings in performance in an employment sense; it needs to be evident that the teacher has, over an extended period of time, failed to do the most basic requirements of the job, and when confronted with such, does not demonstrate any acknowledgement of the shortcomings or any willingness to take the opportunity to address the situation.

In the matter of *Neil Larsen [2008] VIT 76* the Panel noted that if a teacher's practice were such that it would defeat the cause of imparting knowledge to students then the teacher would be seriously incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty of negligence or incompetence in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach then the teacher would be seriously incompetent. There is a duty on all teachers to achieve and maintain an appropriate level of competence and care. If the teacher has been guilty or so incompetent in a professional capacity which has been to such a degree or so frequent to reflect on the teacher's fitness to teach, then the teacher would be seriously incompetent (see *Raylee Patricia Harley v Robert McDonald & Ors [1999] NZCA 145*).

#### *Fitness to teach*

In relation to "fitness to teach" the Panel was guided by the matter of *Davidson v Victorian Institute of Teaching [2007] VCAT 920* where the Tribunal considered factors relevant to whether the teacher's conduct in that case demonstrated a lack of fitness to teach. These factors in summary are:

- a. there must be a perception that the conduct complained of is of a continuing and persistent nature;
- b. conduct which throws doubt on how the person would behave in the future in the classroom will indicate a lack of fitness;
- c. an act or a series of acts of serious misconduct that explicable in context and unlikely to recur do not of themselves demonstrate a lack of fitness;
- d. a finding that a person is unfit to teach carries with it an assessment that the person should not be in a position of authority and trust with children, because his or her whole approach to teaching and to the children in his or her care is profoundly and irretrievably flawed.
- e. the whole of the teacher's conduct as found is relevant to a decision as to whether the teacher is fit to teach. Any behaviour found to be inappropriate for a teacher is relevant to the ultimate question of fitness to be a teacher.

What must be considered is the fitness of the person concerned to work as a registered teacher. The question of whether the person has the qualities which would permit him or her to be safely accredited to the public, without further inquiry, as a person to be

entrusted with the work of a teacher (*Singuenza v Secretary to the Department of Infrastructure* [2002] VSC [33 – 34]).

In the matter of the *Peter Papageorgiou* [2005] VIT 20 the Panel considered relevant factors for the duration of the incompetence, evidence of insight, evidence of candour during the Panel hearing, whether the teacher has provided an adequate explanation of the incompetence and whether that evidence is corroborated by independent evidence, the effect of the teacher's behaviour on the school community and the standard of the profession, the time which has elapsed since the incompetence and the evidence of corrective action taken by the teacher.

The Panel has found that allegations 1, 2, 3, 4, 5, 7, 8 and 9 are made out. To determine whether the teacher is seriously incompetent the Panel considered the cases of *Moran, Gordon, Brown, Larsen* and others referred to above and found that the teacher demonstrated serious incompetence from 2004 to 2006. This was not simply individual instances of incompetence, but rather incompetence over an extended period, particularly for a teacher of the teacher's experience. The Panel found there were a number of occasions and instances when the teacher's teaching practices were of a lesser standard than would be expected by her peers and by students and their families. Taking together the totality of the instances during this period, the Panel concluded that this amounted to serious incompetence.

With regard to the teacher's fitness to teach the Panel had regard to the cases of *Davidson, Singuenza and Papageorgiou* referred to above. The Panel finds that the teacher remains fit to teach despite finding that she was seriously incompetent during the period. The Panel was encouraged by the teacher's acknowledgment of her deficiencies and noted that she has demonstrated a willingness to improve her knowledge and skills by undertaking a substantial amount of professional development and other courses in an attempt to do so. This gives the Panel hope that the teacher, through remediation, would be able to improve her teaching skills. The teacher indicated that she wishes to return to teaching and has made a concerted effort in the period since her dismissal to try and improve her skills. Counsel Assisting the Panel submitted that it would be difficult to argue that at the present time in light of her time out of teaching, her professional development activities and alternative employment that the teacher was unfit to teach. The Panel agrees with this submission.

## **DETERMINATION**

The teacher has acknowledged her deficiencies in the period under review and convinced the Panel that she has not taken these lightly. Since her dismissal from the employer, the teacher has retrained as a Welfare Worker and has been employed in that field at the Family Care Out of Home Care Service as a Foster Care Worker. A reference received from her employer outlined her responsibilities in her position as a Foster Care Worker which entails:

- undertake assessment of and provide support, monitoring and counselling to individuals and families using the service;

- provide consultation, prepare reports, develop case plans, and make recommendations about individuals and their families;
- establish and maintain placements and provide after care in the various components of the program;
- liaise with other agencies, individuals and regional community groups regarding the provision of foster care services for those who require it;
- participate in recruitment, training, assessment and review of prospective and existing care givers;
- participate in regular team meetings, agency staff meetings and staff development sessions.

In the course of her studies in Welfare Work and her employment as a Foster Care Worker the teacher told the Panel she has had the opportunity to reflect on her deficiencies, work on her organisation and planning skills, review her approach to supervision and its beneficial use when undertaken in a positive manner and she has undertaken numerous professional development activities in relation to teaching, thereby demonstrating to the Panel's satisfaction that she is serious about her desire to return to the teaching profession.

The Panel noted that the teacher has completed the following professional development activities relevant to the teaching profession:

- Return to Teaching Professional Development August 2010 Catholic Education Office:
  - National Professional Standards for Teachers and VIT Updates
  - The Scope and Purpose of the Australian Curriculum
  - Implementing Positive Behaviour Strategies in classrooms
- CRT Support Network September 2010:
  - Beyond "Telling Off" Positive Behaviour Management
- Transforming Childhood Trauma: Connecting with Empathy and Compassion, Speaking Tour by Bruce D Perry MD, PhD, Berry Street, September 2010

In addition to the above, the teacher provided details of other professional development activities she has completed including:

- Facilitation – Department of Planning and Community Development, March 2009
- Website/Page Creation (Dreamweaver MX) TAFE, April 2009

While the Panel has made a finding that the teacher's performance between 2004 and 2006 amounted to serious incompetence, the Panel considered that her resulting dismissal as a teacher was a serious consequence and should be taken into account when making a determination in this matter. The Panel was persuaded that the teacher's dismissal from her position as a teacher has been a salutary lesson and she has had time to reflect on the consequences of poor performance. The Panel is satisfied that she has demonstrated sufficient insight and has engaged in appropriate professional development and further training with a view to reskilling and remediating herself in preparation to returning to teaching. The teacher has shown to the Panel's satisfaction, knowledge and understanding of strategies and approaches needed to engage students

in the learning process. The Panel therefore decided that it would be appropriate in this case to place a series of conditions not simply as sanctions but to ensure that the teacher returns to work in a supported environment under the mentorship of an appropriately skilled and experienced colleague and that she is able to demonstrate progress in areas that have been identified as deficient.



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**MARILYN MOONEY, CHAIRPERSON**



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**per:**  
**NICOLE LYLAK, REGISTERED TEACHER**



.....  
**SOPHIE PANAGIOTIDIS, PANEL MEMBER**