

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 111

REGISTERED TEACHER: Yen-Qing LEE

PANEL MEMBERS: Garry Salisbury, Chairperson
Anne Farrelly, Registered Teacher
Rowland Richardson, Registered Teacher

ATTENDANCE: The teacher attended the Formal Hearing and was self represented.

Ms Anne Sheehan, Counsel Assisting with Ms Katrina Galanos, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATES OF HEARING: 6, 7 and 27 June 2011

DATE OF DECISION: 27 July 2011

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 20 July 2011 the Panel found the teacher guilty of serious incompetence and unfit to teach.

The Panel determined to suspend the registration of the teacher from 27 July 2011 to 27 January 2012 and imposed the following conditions on his registration:

1. The teacher must advise the Victorian Institute of Teaching (the Institute) within 30 days of commencing employment as a teacher.

2. Before commencing employment as a teacher the teacher is to engage at his own expense an experienced mentor of at least five years experience, approved by the Chief Executive Officer of the Institute, to act as a professional mentor for 12 months. The mentor will provide peer support and collegial advice over this period in the following areas:
 - The planning and preparation of lessons.
 - The selection and use of suitable classroom materials.
 - Strategies for engaging students.
 - The ability to develop, maintain and report student assessments.
 - The provision of the needs of individual students.
 - A clear understanding of the employer's student management policies and processes and clear evidence of his implementation of them.
 - Punctuality to class and attendance at yard duty.
 - The treatment of students with courtesy and dignity.
 - An understanding, implementation and application of VELs to his classes.
 - The provision of work for his classes in his absence.
 - The development of collegial relationships and a contribution to teamwork.
 - An understanding of the Institute's Code of Conduct and Code of Ethics.
3. The teacher is to arrange for the mentor to provide two reports to the Institute, the first after the first six months and the second at the end of the twelve months commenting on the teacher's competency in the areas referred to in condition 2.
4. The teacher is to arrange for his principal or employer to countersign the report to indicate their agreement with the mentor's report.
5. If the reports from the mentor are not satisfactory to the Institute the matter may be subject to further investigation.

REASONS

BACKGROUND

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

By letter dated 9 January 2009 the employer notified the Institute that it had taken action in relation to the alleged serious incompetence and lack of fitness to teach of The teacher.

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

The teacher resigned from the employer on 8 October 2008.

On 24 November 2010 the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 5 April 2011 was served upon the teacher by registered post on 16 April 2011.

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 2008, the teacher:

1. Failed to use a range of teaching and learning strategies, technologies, activities and resources in order to engage students in active learning, including:
 - a. On 13 March 2008 and 27 July 2008, reading the newspaper and ignoring the students in class (Allegation 1a withdrawn)
 - b. Whilst being observed by other teachers in September 2008, talking to the class continuously for 25 -30 minutes without engaging the students and often talking to the class whilst facing and writing on the whiteboard
 - c. Having the Year 11 ESL class read the same book, for more than 5 months, in circumstances where the School's other ESL class had already completed reading the book
 - d. Pitching the materials in a Pastoral class on 12 September 2008 at too high a level, which caused the class to become disengaged
2. As a result of failing to use a range of teaching and learning strategies, technologies, activities and resources in order to engage students in active learning:
 - a. Students were observed by other teachers not to be engaged in active learning
 - b. Students requested to be removed from the study of Chinese during the school year
 - c. Students elected not to continue with the study of Chinese

3. *Did not accommodate the individual learning needs of students including:*
 - a. *On 17 September 2008, 6 October 2008, 8 October 2008 failed to use a range of teaching strategies to cater to the needs of both the native speaking Chinese students in the class and the students learning Chinese*

4. *Did not demonstrate appropriate classroom management techniques including:*
 - a. *Failing to maintain appropriate noise levels in the classroom*
 - b. *Yelling, throwing pens and pencils in anger at students, including on 28 July 2008 which caused distress to a Year 7 student, student 1*
 - c. *Frequently ordering students out of the classroom leaving them unsupervised*
 - d. *Frequently referring students to the Year 7/8 Co-ordinator without any attempt to deal with the issues concerning individual student behaviour and sometimes without explaining to the student why they were being sent to the coordinator, contrary the school's Student Management Policy*
 - e. *Failed to follow 'restorative practices' in order to manage student behaviour in the classroom*
 - f. *On 6 October 2008 failed to promptly wake a student who had fallen asleep in a Year 9 Chinese class*

5. *As a result of the failure to employ appropriate classroom management techniques:*
 - a. *On 11 April 2008, a physical altercation between student 2 and student 3 took place in a Year 9 Pastoral Class*
 - b. *20 students attended a meeting with Year7/8 Co-ordinator, teacher 1, to complain that the teacher was aggressive towards them, yelled at them and was unpredictable in his behaviour towards them (allegations 5a & 5b withdrawn)*

6. *Failed to supervise students adequately and create a safe environment for students, including:*
 - a. *During February 2008 and on other occasions did not undertake timetabled yard duty*
 - b. *Often arrived late to designated classes*
 - c. *On 6 March 2008, was absent from a Period 2 Year 7 Chinese class for the first 10 minutes, during which time a physical altercation between student 4 and student 5 took place.*
 - d. *On 29th July 2008 did not commence bus duty until 3.10pm when bus duty was required to commence at 2.55pm and only commenced bus duty after having to be asked twice by the Principal (allegation 6d withdrawn)*

7. *Failed to treat students with courtesy and dignity, including:*
 - a. *On 25 February 2008 during a period 1 Chinese class, referred to a female Year 7 student, student 6, as "big girl on the table at the back" in the presence of other students, causing student 6 to become offended by the comment*
 - b. *On 3 September 2008, in a Year 7 Chinese class referred to a male student as "little boy"*
 - c. *Asked a female student what she'd done to her arm and made comments to her that what she'd done "was a completely stupid thing to do" or words to that effect*

8. *Did not to demonstrate knowledge of curriculum statements, policies, materials associated with the content he taught, including :*

- a. a failure to demonstrate the application of Victorian Essential Learning Standards (VELS) in the delivery of classes and the adaption of classes to cater to different levels of student ability
 - b. a failure to demonstrate the application of VELS in lesson planning for classes
 - c. a failure to assess students in accordance with VELS
9. Failed to plan and prepare adequately for lessons in circumstances where:
- a. Work programs for Year 7, 8, 9 and VCE Chinese classes were not sufficiently prepared in order for a relief teacher to be able to take over the class
 - b. In a Year 7 Chinese class on 4 September 2008, failed to:
 - i. follow the lesson plan for the class
 - ii. sequence lessons properly
 - iii. relate the class activities to one other
 - iv. had insufficient activities planned for the class and
 - v. communicate the aims of the lesson to the students
 - c. Failed to develop and follow an English as a Second Language(ESL) strategy for the Year 11 ESL class
10. Failed to monitor student engagement and maintain records of their learning progress:
- a. Contrary to the school's homework policy did not ask students to record their homework, did not check the homework in a Year 9 Chinese class on 8 October 2008 and in a year 11 ESL class on 12 September 2008
11. Failed to select appropriate assessment strategies to evaluate student learning, in circumstances where:
- a. There was no evidence assessment tasks reflecting higher order thinking skills within Bloom's taxonomy in a year 7 research assignment for the theme of "Survival", after the use of such an assessment strategy was suggested by the School's teaching and learning coach (allegation 11 withdrawn)

PRELIMINARY ORDERS

Counsel Assisting noted that the teacher was unrepresented and that in discussions prior to the hearing he had indicated that he wished to apply under section 2.6.45(f) of the *Education and Training Reform Act (2006)* (the Act) for his name to be suppressed until after the hearing. Counsel Assisting provided the teacher with a copy of the decision of *Ham* [2010] VIT 104 prior to the hearing to familiarise him with the Hearing's processes and to set out the legal authorities. Copies of *Ham* were distributed to the Panel. In response to a question from the teacher it was explained to him by Counsel Assisting that it was preferable that witnesses not be called back if the teacher thought of questions at a later time. Counsel Assisting stated that if necessary breaks could occur to allow the teacher to consider if he had further questions.

Counsel Assisting explained by way of background that the teacher had resigned from the employer while that body's disciplinary proceedings were occurring. The Institute's Disciplinary Proceedings Committee (the Committee) decided to refer the matter for investigation. After considering the report the Committee decided that the allegations

that the teacher should be referred to a formal hearing. Counsel Assisting explained that it was not the employer's prior conduct which was the issue. The Institute's allegations of possible "serious incompetence" and "fitness to teach" were the only allegations that the teacher needed to address. The teacher was however able to contextualize the issues but he didn't need to discuss his whole career.

The teacher provided a written submission to the Panel dated 30 May 2011 outlining the legal authorities for the hearing and then linked these principles to his case.

Counsel Assisting addressed the teacher's submission. She pointed out that these proceedings were governed by the notion of procedural fairness and natural justice. The Department's guidelines were not relevant to the proceedings. This was not an employer's hearing but the Institute's. She said that some information in the hearing book related to employer processes and was not relevant. She said that if the teacher's performance was affected by disciplinary proceedings then the Panel could keep that in mind. For example the lack of a Languages Other Than English (LOTE) teacher in his support group could be raised by the teacher if he wished.

Counsel Assisting pointed out that the standard of proof to be satisfied in this case arises out of *Briginshaw v Briginshaw* and was "on the balance of probabilities". She stated that the allegations had to be proved to "a reasonable level of satisfaction." She argued that disagreement between the teacher and the witnesses was generally about the peripheral issues. She said that the Panel had prejudged nothing. She stated that credibility was not a checklist and that the Panel had to be concerned with what happened in relation to the teacher's teaching practice. She argued that it was not clear how Items 4, 5, 6 & 7 of the teacher's submission were relevant to the proceedings. These items referred to indirect discrimination, employer obligations, workplace bullying and harassment and corruption. She stated the facts would need to be linked to these principles by the teacher and to the legal authorities guiding the hearing but there was no evidence that they were relevant in this case. If they affected his competence they can be discussed. Counsel Assisting asked if there were any ill-health issues that could be linked to incompetence. She pointed out that the medical results of 31 August 2007 and 25 August 2008 relating to diabetes and other health matters were not supported by a doctor's report. She stated that the Panel should accept that the teacher suffered from diabetes and had other indicators of other health conditions but they did not go to the question of his competency and fitness. She argued that the health articles provided were irrelevant.

Counsel Assisting pointed out that the teacher began teaching at the school in 2005 but the matters relate to 2008. The witnesses provided evidence based on their observations of the teacher's teaching. They noted that the teacher disengaged from his support group and the process was unfinished. Counsel Assisting pointed out that a number of the allegations are generic.

The teacher referred the Panel to pp.32-34 of *Ham* which outlines the meaning and features of serious incompetence and fitness to teach. He said that this case argued that serious incompetence meant that a teacher was not trusted, unable to see the need to improve their skills and their behaviour was more than just shortcomings in their performance. The weighing of "serious" depended on the facts of the case, the level and

frequency of the incompetence and their duration. He argued that the allegations cover a period from 24th August to the 4th September 2008, a period of 24 days while the support group was in operation.

The teacher argued that in regard to fitness to teach the teacher's misbehaviour had to be of a continuing and persistent nature and their approach to teaching was shown to be profoundly and irretrievably flawed. Serious incompetence suggested that the teacher was a threat to the public. The teacher argued that a series of acts explicable in context don't show incompetence. He said that he was still an ESL (English as a Second Language) learner. He said his professional engagement had been high and he was a well-known member of many professional organisations. As a member of the Chinese community the role of teacher was highly respected and his reputation would suffer a great deal if he was identified during the proceedings. The teacher requested that his name not be published under section 2.6.45 (f).

Counsel Assisting argued that the first principle of the law in this area was that hearings had to public be as outlined in Section 5(d) of the Act because the public were entitled to know. Counsel Assisting stated there were two exceptions to the rule in section 2.6.45(f). One was that identifying the teacher would interfere with the administration of justice and the other was for any other reason in the interests of justice. She argued that neither of these exceptions applied and there were no good reasons to not identify the teacher.

The Panel adjourned to discuss the teacher's submission.

The Panel decided to reject the teacher's request and reiterated the principle that openness and the public's right to know are paramount. The Panel decided that the teacher's arguments were not sufficient to justify granting an exemption. The Panel took the teacher's cultural background into account.

EVIDENCE

The teacher resumed his opening statement and referred the Panel to the Principal's statement (p.1), the Principal's response (p. 29) and the teacher's response to the allegations (p. 37) in the hearing book. He said that the unsatisfactory performance process began on July 28th 2008 but that he was unaware of some of the incidents raised in the allegations. Some had been raised but then never heard of again. The teacher said the support group began on the 4th September and lasted 24 days and the observations made are not sufficient to justify the course of action that followed. He said there were only a small number of incidents and one observation and that this did not justify the principal's decision to begin unsatisfactory performance procedures. After the teacher responded to the incidents nothing else was said. He said the incidents occurred over a brief period. He said he was a victim of indirect discrimination and that teachers of different subjects had different workloads.

The Principal

The Principal has been Principal of the school for 21 years. He agreed that he had made the statement tendered and signed on the 9th September 2009 and that all the particulars

were true. He said although the suburb where the school was located was affluent most students came from the suburb A and suburb B Housing Commission estates. The school currently had 530 students representing 52 different nationalities. It was classified as a highly disadvantaged school. It normally had a small year 7 intake but was top heavy with over 200 VCE students. It was a large provider for international students. Fifty percent of students were of Chinese or Vietnamese origin. He said the school was harmonious, peaceful and racially calm. Staff had tended to stay for long periods; their average age was 51 years. He said the building had been refurbished since 2003. The main building is three stories and there are no internal doors. The internal arrangement is based on open learning areas but the science rooms have doors for security reasons. The Middle Years area began in 2004; the ESL lab began in 2010. The school is an accredited language centre and overseas students do an intensive language course in the lab in year 10. They spend sixty percent of their time on language. They then undertake VCE with ESL support. They share normal classes with year 7-12. The school is a registered training provider of VET in media. The Attitudes to School data was high (in the top 25% quartile). More students did ESL than mainstream English.

Chinese LOTE was traditionally taught to year 7-12. Both native and non-native speakers would be in the same classes. By 2006 the Principal said there was no interest from students doing Chinese after year 9 but ESL classes continued. When the teacher began in 2005 the Principal had no reason to question his skills but certain things began to come to his attention including raised noise levels and the lack of documentation from the teacher and his classes. There appeared to be a lack of enjoyment in his classes. There was one other LOTE teacher and they had different approaches to language teaching. The other teacher used a more VELS centred approach. Before the events of 2008 there was a pattern of noise levels being high; students sent from class to year level coordinators when the teacher should have been dealing with them; and a low work output from students.

During 2008 the Principal said that the teacher didn't attend his bus duty on 29th July 2008 which was due to commence at 2.55 pm until 3.10 p.m. The Principal went to the teacher's office when he did not arrive at his bus duty and found the teacher on the telephone. The teacher eventually attended his yard duty after several requests from the Principal but went to a position 200 metres away from the one he was supposed to staff. It was a concern because the Principal had addressed staff on student behaviour at bus lines about 2-3 days before this incident and created another bus duty position to address problems. The Principal considered this was a serious case of a teacher ignoring a clear instruction he had given.

The Principal said that the allegation of the teacher referring to a student as "big girl" was proved and the teacher committed himself to apologising to the girl concerned. The Principal said that all students should be treated with respect and courtesy.

The Principal said that the teacher was frequently late for classes and despite the teacher's office being above the classroom and the fact that it was only one minute from his office to the room by one flight of stairs. Sessions 1 & 2 are the only sessions where everyone moves. There was a warning bell between these periods.

The Principal said that he walked the building and personally observed the teacher reading a newspaper as per Allegation 1(a).

In relation to allegation 6(c) the Principal said the fight between students occurred as a result of the teacher either not being present or not supervising students adequately. The Principal believed the fight had occurred because the teacher was not supervising and this was a complete breach of his responsibilities and duty of care. He said the duty of care a teacher had to students was very important. He said he knew nothing of the teacher's medical issues and they had never been raised with him in 2007-08

In discussing allegation 4(c) the Principal said that student 1 was too upset to go to class. The teacher was reading a newspaper when the Principal came to enquire about the student's absence from class. A leading teacher supervised the class after the teacher asked if he could go to the Principal's office. The student's parent worked at the school. The Principal felt that the teacher's class had no focus on learning at all and he was very unimpressed with the teacher. He said the teacher's performance as domain leader was poor. He said the teacher was given an allowance of four periods and there were only two people in the domain. He said the senior students were not selecting VCE LOTE and the schools expectation was that some students would follow it through to year 12. He felt this was a failure on the teacher's part.

The teacher said that he had only needed to initiate a support group three times since 1990 and these had been overwhelmingly successful. The Principal said it was customary for him to sit on support groups. The Principal felt there was an inconsistency between the teacher's POLT survey results which had normally been collated on-line and processed outside of school. Teachers had been asked to reflect on the results but the Principal would not normally see them. The format used to show the teacher's results were not the one used by the school normally.

The Principal said that the support team was diverse and mainly comprised of leading teachers. In response to the questions regarding the failure to have an ESL teacher as a member of the support team, he said competent teachers can judge "competence" and there was therefore no need for an ESL teacher. There were leaders within the school who could complete the task. Other ESL teachers and the other LOTE teacher, teacher 2, were consulted. The Principal said that the documenting of curriculum was important. It allowed a staff member to step in if required for example if a teacher was absent. He was critical of the teacher downloading large amounts of VELs information which he felt was massive and general rather than specific to his teaching. The Principal said that he observed the teacher's classes as part of the support group because he felt it was his responsibility. When asked if the teacher was unhappy with his role and presence The Principal said that the teacher had made no specific comment to him though he may have been unhappy. He said he had provided some feedback to the teacher after the first observation of his class and expected that there would be some improvement but the teacher none after that. He did not know why the teacher had ceased to speak to him. The Principal explained that professional development included a mandate for ICT but staff could also indicate what they needed. Staff attended subject associations and conferences etc. and the aim was to increase their professional learning.

The Principal said that the teacher's markbook contained a series of ticks and that he did not distribute assessed work back to students. He said there was no sign in the teacher's markbook of any diagnosis of student work or performance. The Principal said that evidence had to form the basis of teacher reports on students.

The Principal said that he had had complaints regarding yelling in the teacher's class so he moved the teacher into another area where the room had a door. The complaints had come from the year level coordinator and other teachers. The Principal felt the noise was not productive and didn't reflect cooperative learning. He said the other LOTE classes didn't have the same noise levels.

In reply to the teacher's cross-examination, the Principal said that the school had stopped using the Electronic Unit Planner (EUP) at the end of 2010 and it had been phased out by the use of a new Consensus Map. He said that he had seen material from the teacher but he couldn't see evidence of the new technique the teacher was following. The Principal said that the teacher often referred to a new way of teaching Chinese based on the work of a professor. He said all staff had to put outlines on the EUP.

The Principal said that Chinese had been introduced to the school because it was felt it would be more attractive as many students had it as a first language. Indonesian had finished in 2005-06. He said that the teacher had been appointed as the LOTE Domain manager because he was the only one to apply. He said the teacher had been appointed LOTE Domain leader after being at the school for nine months. In relation to the bells between periods 1 & 2 the Principal said that two minutes had been added to period 2 to allow travel time. The Principal said he could see no reason why teachers couldn't be on time. He said that he had given the teacher a warning about noise, students being sent out and low student work output. When asked if the "big girl" remark was not badly intended or arose from a lack of cultural sensitivity the Principal said he didn't accept it was culturally appropriate but thought it was generally inappropriate. When asked by the teacher if it was a disciplinary issue, the Principal said that it didn't warrant disciplinary action rather it was about the teacher's use of language. The Principal reiterated that he was unhappy with the students in the teacher's class being unfocussed and that the teacher wanted other teachers to solve his classroom management issues. He said the issue of the "big girl" remark was resolved when the teacher apologised to the girl.

The Principal was asked by the teacher if he knew that student 1 had a sibling and what the sibling thought of the teacher's teaching. The Principal said that he knew he had a sibling but did not know what he thought of the teacher's teaching. The Principal said that he had had not fast tracked a letter from student 1's parents but felt that student 1's reaction was part of the jigsaw of the teacher's classroom management weaknesses. The Principal denied that he had not sought personal input from the teacher and Counsel Assisting objected when the teacher wanted to ask whether he had been excluded by the Principal.

In relation to the support group the Principal said it was composed of experienced teachers and in response to a question whether the group was judgement- making or helping the teacher he said its processes were clear. It was well researched to be supportive. When asked if the absence of a LOTE person was a good thing the Principal

said it was absolutely. He said instructional rounds are now common in schools. He said that the teacher's request to replace two members of the support group was not taken up because the two replacement teachers were not LOTE teachers in any case, he was comfortable with the structure and processes and his leadership group supported his decision. He said the teacher had downloaded VELs information with no annotation and not linked to a EUP document. When asked if the information should have links to all domains the Principal said that the teacher's document did not specify what was happening in Years 7-9. The Principal said he had the teacher's document at the time but he did not have it now. When asked by the teacher whether he had displayed classroom material the Principal said there was one Chinese lantern and that the teacher did have space he could use. The Principal's class observations revealed that the teacher's classes showed no link between VELs and what he was teaching. The Principal also stated that the teacher's students did not demonstrate any language skills by the end of year 9.

The teacher asked why the Principal had annotated the teacher's August 21 2008 response to the Principal allegations but had not clarified the matters with him. The Principal stated he believed that he had followed appropriate processes.

Counsel Assisting asked the Principal if the noise level had been an ongoing concern since 2005 but he said it he only became aware of it in recent times. When asked if the teacher had made an effort to rectify those practices that had been brought to his attention, the Principal said no.

Teacher 3

Teacher 3 said that she had been on staff at the school from 1991 until the present. She agreed that he had made the statement tendered and signed on the 9th September 2009 and that all the particulars were true. She had taught history and geography at the school. She said the teachers' performance plans used teacher standards and needed to have a school Strategic Plan focus. She described the review process including a three month period when teachers would collect evidence. After the teacher disagreed with the VCE Chinese examiner's report teacher 2 suggested that he needed to moderate with other teachers but this didn't take place. Observations suggested there were issues with the teacher's teaching in 2007. She noted that he sent students out in a group for extended periods of time. Teacher 3 felt that the students' misbehaviour arose out of disengagement in class. She stated that students felt his class was 'a bludge'. Other teachers complained about the noise from the teacher's classes and the teacher was warned about the problem. Teacher 3 said noise was not a problem in other classes including Chinese classes. She felt the teacher's classes were unproductive, contained no purposeful activity and students frequently spilled into corridors.

After observing classes teacher 3 felt that the teacher's classes watched too many videos for which no ratings were available. They also seemed to have no educational content. Some students asked her if they could do other work. She stated that students weren't interested in martial arts. She stopped the video she was given to show during an extra and then raised her concerns with the teacher. The lecture theatre was regularly booked by the teacher to show videos. When she gave him written feedback regarding his failure to leave work for relieving teachers the teacher indicated that he couldn't leave work for LOTE classes.

Teacher 3 testified that she knew when the teacher was late because she was in the corridor on AP duties. She said that the ESL teachers worked productively together and she gave the example of the 30+ strategy they developed to lift the average VCE language study score over 30. She said that if the teacher had medical issues they would normally have gone to the Principal. She said that students were sent out of class and were often confused about the reason why.

Teacher 3 said her role in the teacher's support group was to focus on constructive relationships and management. She noted that he signed the observation on 4th September 2008 without comment. He did not respond to the 12th September 2008 observation and did not sign the document. The 6th October 2008 observation outlines a discussion with the teacher but it was unsigned. Teacher 3 said that the teacher did not give Year 12's individual feedback. She said the decision to spend 5 months on the novel, 'Looking for Alibrandi' indicated to her that the teacher had bad judgement on how long tasks would take. She said the observation on 8th October 2008 indicated there was no structure to the lesson, there was lots of focus on the whiteboard. He didn't ensure books were open. One homework book she saw had no record of work done. Teacher 3 stated that her observations of the teacher's class indicated that he had poor instructional practice and set unrealistic expectations on students.

The teacher in cross-examination asked if teachers should always do what VCE examiners say. He said that he had lots of top scorers in every level. He asked if it was the number of students being sent from the room that concerned teacher 3. She said that it did alarm her, it was not normal to send 3-4 students out of the classroom. Teacher 3 said she did not know why students were being sent out. She was asked if the Raymond Lewis model included the option to send students from the room. Teacher 3 said the model suggested there should be two warnings then the students should be put on a chair outside for five minutes after which time they should have been brought in. She said that this was not personal interpretation but part of an established process. Restorative chat was to be used which put the behaviour back on the teacher. These chats should take 15 minutes. Teacher 3 referred the Panel to the Student Management Policy (pp.125-127, Hearing Book) which was one of the documents that outlined the structure and process. She said the staff had a day with Raymond Lewis and that teachers should do their own reading with books the school had purchased. The expectation was that staff would assist each other in the process. She said that student misbehaviour was not normal for other classes at the school. She said the Raymond Lewis approach was introduced in 2006/07 because there was a need for greater consistency. When asked if Raymond Lewis was the basic structure teacher 3 said it was a combination of that with employer and other guidelines. When asked if it was effective in open classrooms she said it was but it wasn't a magic wand. Teacher 3 said she did not remember the Internet research the teacher said he had given her on open plan classrooms. She did not remember him offering himself as an expert in the area. When asked if she had ever tried to address the whole issue teacher 3 said that others thought that the teacher was unwilling to have restorative chats even though they had tried to get his support. Teacher 3 said she witnessed what was going on in the teacher's classes while school tours were being conducted. She said his classroom management was not an issue in years 11/12 but were a regular problem in Years 7-9. Teacher 3 said she did receive a copy of the new approach to Chinese language teaching provided to her by the teacher but had not looked at it since. She said she could

not understand the intricacies of the approach but she could recognize a working classroom. She said that VELs was clear, it set out standards and the teacher's lesson plans and practice did not create a quality classroom.

She said that in taking the teacher's class for an extra no instructions were left apart from watching the video which had no rating. When asked by the teacher why he was away teacher 3 said that he could have been sick and unable to prepare anything but that there was a filing cabinet available with activities for classes in an emergency. She said she did not keep as record of these events at the time but it had happened on a number of occasions. She said the teacher did not attend ESL strategy meetings and the Study Skills sheet in the middle of a novel study was not appropriate. She felt that the activity sheet was also inappropriate. The aim to scaffold student learning was not happening and feedback to students was minimal. Teacher 3 said the support group was aiming to support the teacher across a range of considerations and that it followed clear guidelines. She said she could not remember how many students she had spoken to in the teacher's class but she had mentioned some of them in her observations.

Teacher 4

Teacher 4 said she had been a teacher for 32 years and was currently the Director of Student Learning at the school. In that role she dealt with student welfare issues through the school and had 10 years in the position. She had conducted mediation with a student and the teacher in 2008 over an allegation that the teacher was treating the student unfairly. She said that the mediation took the form of a restorative chat. She said the session was very successful and the teacher was cooperative. The Year Level Coordinator had criticized the teacher but she had not taken it up with him. Teacher 4's role in the support group was to give both positive and negative feedback. She said that the 'little boy' comments were not liked by students. She said the teacher's classes were characterised by a lack of engagement and no differentiated teaching. She said her first observation contained both positive and negative comments. In the second observation of the pastoral group she highlighted the teacher's management issues. She said they had a long conversation after the first observation. When asked if he had changed his approach teacher 4 said there was no improvement in student engagement and no improvement in the following of rules by students. She said the open classrooms had made classes tougher to work in but she said that her observations would not have changed because of the setting.

In response to the teacher's questions teacher 4 said she had talked to teacher 1, the Year Level Coordinator and used the Assistant Principal as a sounding board. The teacher's students were complaining including one student who had some personal issues.

The teacher raised the issue of the student's credibility and Counsel Assisting pointed out that teachers are expected to teach students of all backgrounds and that the issue was not about the student's purported illness but about the credibility of her comments. The question was rephrased to ask whether the student had complained and teacher 4 said she had.

Teacher 4 said that the open learning environment was a difficult one when asked if language classes should be held there. She said that exiting the student was one of

Raymond Lewis' five steps. She said that if she had a report about a teacher leaving them outside for too long she would speak to the teacher.

When asked about the context of the 'little boy' comment she said it had not been made as a discipline matter or because the teacher did not know the student. The teacher had said "Did you know that little boy, student 7?" Teacher 4 did not recall if the student had actually taken offence. She agreed there was a difference between could and maybe taking offence. Teacher 4 said she could not be sure if the papers left on the floor in the teacher's room had been from a previous class. She said that he spent a lot of time talking about the previous lesson. She said she did not remember a conversation with the teacher after the 12th September 2008 observation and that he did not sign the observation sheet and didn't give her an explanation. She said that the material given to the pastoral care class was above their level and the teacher read it to them in a droning voice. Teacher 4 said she felt the teacher was not learning anything from the range of student complaints. When asked about the student with personal issues and whether she had investigated further teacher 4 said the teacher had agreed to have a restorative chat. Teacher 4 agreed that not many students had come to her to complain about the teacher. Teacher 4 confirmed that the teacher talked facing the board too much. Teacher 4 said that the teacher's classes were too teacher-centred in both language and pastoral care classes. She said there was too much repetition while the class remained idle.

Teacher 5

Teacher 5 said he had been a teacher at the school since 1987 until the present time. He agreed that he had provided a statement which he had signed and dated the 9th September 2009 and that it was true and correct. He said he had had only general contact with the teacher and they had good conversations. He said that he was part of the support group and his focus was on the delivery of lessons. He said that he had a discussion after the first observation and that the teacher listened and agreed with all his observations. When asked if he had adopted all the recommendations Teacher 5 said that his major recommendation had been to engage all students. He noticed that native-speakers were doing private study. He suggested that they could assist other students but the teacher did not employ that strategy.

On the 17th September 2008 when the teacher was late for a class that had been arranged as an observation as part of the support group, teacher 5 took the students in and then tried to find the teacher. He had the students seated while he searched for the teacher. He said in answer to a question that the teacher knew he was coming. When asked whether it was difficult to get students to class on time teacher 5 said it normally took only three minutes. Teacher 5 said the teacher's explanation for being late was that there was a new timetable. With Counsel Assisting it was established that the class in question occurred in the final week of term (3). Teacher 5 also stated that he was the timetable organizer and that if there had been a timetable change that LOTE classes would not have been effected as their block in the timetable rarely changed after the start of the year.

In that class that he then observed the teacher took 40 minutes before talking to the native speakers. They were not involved in the lesson. He agreed that the teacher was in a position to see some students sleeping. He said it was a square shaped classroom with computers against the outer edge.

The teacher asked how many native speakers there were and teacher 5 said there were three. He said some students were doing work for another subject; others were talking or using computers. Overall, he said the class was not productively engaged. Teacher 5 said he felt the teacher should be able to actively engage them. When asked if they had come to Australia recently teacher 5 said he was not in charge of year 9 and did not know. Teacher 5 said if any teacher was 20 minutes late he would get the class in and get it settled.

When asked if he remembered a discussion with the teacher in 2007 regarding the new approach to language teaching he said he didn't recall it. He agreed that he had shared a room with the teacher and they had discussions as colleagues. Teacher 5 said he had no comment to make on whether the teacher's class was noisy, he felt it was a normal level of volume. He said the teacher's classes were predominately teacher-centred and this created engagement issues because he frequently had his back to the class and didn't respond to general conversation. When asked if the teacher yelled he said maybe but nothing out of the ordinary. He had not seen the teacher throw things. Teacher 5 felt he could still comment on the teacher's teaching even though he wasn't a language teacher. He said the teacher was involved in a project and creating a movie activity. He attended Year 9/10 camps. Teacher 5 did not see any assessment by the teacher. He said some students were engaged in class, others not and there didn't appear to be any challenging of students.

Teacher 5 was asked about the content of pastoral care classes and said that he had presented an overview, given some activities but teachers were expected to create their own activities within the guidelines.

Teacher 1

Teacher 1 agreed that he had provided a statement which he had signed and dated the 17th March 2010 and that it was true and correct. He was currently an Art/Design teacher at the school. Teacher 1 said that the teacher's lateness was a problem and as the Year level coordinator he would have wanted information to deal with the problem. Teacher 1 said he was frustrated at the number of students arriving from the teacher's class with little or no information. They were troublesome students but teachers provided feedback to Teacher 1 to deal with the problem. The teacher provided no information at all.

Teacher 1 said he needed information so he convened a meeting with interested year 7 students. He said paragraph 5 in his statement accurately records his recollection of events. Twenty students attended from the teacher's class. Teacher 1 said he documented their concerns, generally moderated them and general complaints were "hosed down". He said a mobile phone for example being confiscated reflected school policy and could not be a reasonable complaint against the teacher.

He said student 1 had been vague but tearful so he asked him to sit outside. Teacher 1 said his role in the teacher's support group was to comment on student management. He said his role was to comment on aspects of the teacher's class he liked or disliked as feedback.

In response to questions from the teacher about his process he said in the restorative approach he would talk to the two parties, gather information, and identify the issues. He said he had not convened any restorative chats with the teacher. The teacher asked what teacher 1 had done to catch up with him and teacher 1 said that he would have tried corridor chats. Teacher 1 said he did not remember any incident reports made by the teacher to him. He said he did not get a second opinion from student 1's sibling; he needed the teacher's written account. Teacher 1 said that he was not aware that student 1 was shifted after the letter from his parent. Teacher 1 said that it was reasonable that teachers send students out but only if the processes were followed and documented. He said teachers would normally give warnings before exiting students. Teacher 1 said that the process required an incident report to be completed after the student was sent out. He said he did not get written reports from the teacher. He said although verbal reports were okay they had to be followed by a written account. He said the meeting with twenty students was atypical but he wasn't getting any information from the teacher. When asked if one-on-one would have been better he said it may have been but this looked to be a class or group thing. The class had some difficult students but not all were. He said he was time-poor to investigate the problem but he did seek advice from teacher 4. When asked by the teacher how he would rate the credibility of the students, teacher 1 said that he gave more credence to some than others. He treated their views with a mixture of cynicism and respect.

The teacher was advised by Counsel Assisting that if he wished to question the credibility of the witness he had to put that question to teacher 1 rather than infer there was a question of teacher 1's credibility. Teacher 1 said that the teacher's difficulties with students seemed to 'spike' and he (teacher 1) was trying to follow school policy and protocols. Teacher 1 said that after the meeting with the twenty students he tried to contact the teacher through multiple emails, allocated time for a meeting but a meeting never occurred and the teacher never explained why he didn't attend a meeting. Teacher 1 felt that the teacher was avoiding him.

Teacher 6

Teacher 6 said that she was a music and language teacher at both school 1 and school 2. She did not provide a written statement. She said that she had only known the teacher for a few years. She said that she had listened to him teach in 1993 as she sat outside his class at a Saturday morning language class. She said she was impressed with his teaching. He knew the content. He had students in different groups, such as visual, kinaesthetic, etc. She said he began with listening/speaking work then went to other areas of computers. She said he taught the cultural idiom by using Tai Chi. The language became faster as the class progressed. She said it was effective learning. She said it was based on a good knowledge of CSF. She observed his class for a term. She said that the teacher looked at various VELS dimensions, using skills, working towards a standard in procedural text. . She said his class was visually stimulating, the rhythm increased. She said he had the younger students at the front and differentiated activities for the class. She said that she had taught at the school but left before the teacher arrived. She said she could not comment on the open learning arrangements at the school. She said that the school had begun to talk about the Raymond Lewis approach even when she was there. The Panel believed that it did not need to look at the Raymond Lewis publication and all parties agreed that in general Raymond Lewis was the approach used at the school during 2008.

When asked by the teacher if he had told her about his frustrations with the open learning area teacher 6 said she couldn't remember but thought that perhaps he wasn't suited to that environment. Teacher 6 agreed that the student who had praised the teacher had never been taught by him. Counsel Assisting clarified that teacher 6 had observed the teacher's class 18 years ago for 15-20 weeks.

The Teacher

The teacher took the oath and asked that he be able to present a statement relating to each of the allegations. He said that he was currently unemployed.

He said that in relation to Allegation 1(a):

- he was only notified about it much later.
- the Year 9 pastoral care session was on a Thursday.
- teacher 5 was the provider of the program.
- the allegation was not true and should be ignored.
- there was a typographical error was pointed and agreed to all parties that the true date was 28 July.
- period 1 on a Monday was a Chinese year 7 class. School practice was that there was twenty minutes of silent reading to settle the students in. Students were not permitted to do anything except read. He stated that the newspaper was an educational resource he could use to get work from. He stated that he was not reading for fun.
- student 1 was not doing the right thing and was then found in the foyer.
- he kept the class reading to settle them when the Principal came in about student 1.

The teacher said that Allegation 1(b):

- comes from 4th September 2008 during 39 days of observation.
- he was reminding the class of the timeline for Outcome 2 (see p. 105, Hearing Book).
- he was putting the requirements on the board to show the Principal.
- he was doing what was best in his professional judgement.
- writing on the board in characters can take some time.
- it was important for students to know the policy.
- teacher 5's statement was made 28 days later.

In response to Allegation 1(c) about the class spending five months reading 'Looking for Alibrandi' the teacher said:

- they weren't reading fast enough so they started earlier.
- two books and one film had to be completed.
- it was not possible to compare the classes speed at reading the novel.
- teacher 3 was not ESL trained.

In relation to Allegation 1(d) teacher 4 had said that the "Study Hints and Tips" sheet was set at too high a level. The teacher said:

- he was trying to teach study skills.
- he disagreed that it was above the Year 9 students' ability.
- he could work with them and make it comprehensible.

- that although the wording could be difficult he didn't simplify it because he was stressed
- the allegation could not be substantiated and it was not high enough to be serious incompetence.

In relation to Allegations 2(a) the teacher said:

- there was nothing specific in the allegation and it wasn't substantiated.
- the two teachers should have got together and he did not want colleagues working after hours.
- the judgement passed on him lacked credibility because the teachers were not ESL/LOTE teachers.
- he had prepared his own Principles of Learning and Teaching (POLT) results so he could compare them with teacher 5 and they showed that he was engaging students.
- he was reappointed again and again to the LOTE Domain manager position.

In response to Allegation 2(b) the teacher said:

- these events occurred in 2008 only.
- evidence of ten students was not "hard" or definitive.
- teacher 1 had not mentioned the exiting students and this allegation was therefore not substantiated.
- there were thirty four students in language classes but then some were sent to literacy access.

In relation to Allegation 2(c) the teacher said that:

- student enrolment in LOTE dropped across the state.
- the school drop-out rate was similar to the statewide drop.
- the school income from the SRP was not used to support smaller classes and he was told by other staff not to mention this.
- in relation to the lack of display of student work there was no LOTE room and he had to move around and there was a lack of available space. His request for further space was rejected.
- these allegations couldn't be substantiated.

The teacher stated that he had re-considered allegation 1(c) and wished to add some additional information:

- students had spent five months reading 'Looking for Alibrandi' because the task in VCE Unit 4 took 15 hours and students needed to start at the beginning of the year.
- because of their language weaknesses they needed to start earlier.
- at the point teacher 3 observed them they were only two months in.

In relation to Allegation 3 the teacher stated:

- this was a very broad allegation and it was based on the 16 September and 6 October observations by teacher 5 and teacher 3's observations on 8th August and referred to 2-3 native speakers in a year 9 class.
- they were all newly arrived native speakers and had lots of language problems.

- they were passive and lacked confidence. They needed to build up their English but there were no literacy classes available.
- as an ESL teacher he thought it was better to let them catch up on their English.
- he was catering to their individual learning needs.
- this was the approach he adopted early in the term and when he had told other teachers they had no objections to it.

In relation to Allegation 4(a) the teacher stated:

- they came only from the observations of the Principal and teacher 3.
- students needed to speak the language to learn the sixty characters essential in the new learning approach he was following.
- students came to the board and were excited.
- he felt the high teacher class turnover meant the school had lost expertise in implementing VELS and experienced teachers had been replaced with inexperienced graduate teachers.
- the open plan areas were satisfactory for teaching book work but not for verbal work and language classes involved a level of noise.
- he asked for information about how other language teachers at other schools dealt with this problem but the two learning managers he approached did not provide him with anything.
- it was a struggle to teach in the open area but said that there was no evidence that the noise level had stopped the imparting of knowledge
- he was a scapegoat for other problems in the school.

In response to allegation 4(b) the teacher stated:

- they came from the observations of the Principal, student 1 and teacher 1.
- he put written responses in teacher 1's pigeonhole but that he had not responded.
- his frustration was getting worse and that in the case of student 1 whose parent was employed by the school she had never mentioned anything to him.
- he did not have a chance to have a restorative chat with student 1 because of his own ill-health
- he did throw dusters on one or two occasions but never aimed at students. He said this occurred because they were facing in all directions and they didn't respond and kept talking when he tried to get their attention.
- that he had never hit a student.
- his role was not that of a policeman.

In relation to Allegations 4(c-e) the teacher stated that:

- these stemmed from teacher 3's observation of one class.
- he followed the restorative practice by putting student's names on the board, giving them ticks if they continued to misbehave and ultimately giving a detention. They could also remove the ticks by good behaviour.
- problem students were referred to the Year level coordinator. He sometimes didn't send students with a written explanation to the coordinator because it was the same issue all the time and he shouldn't have to repeat himself or say it every single time.
- no-one had addressed the issue of the number of students being sent to the coordinator with him.

- he thought that the problem stemmed from using the Raymond Lewis management process in open plan learning areas which provided students with a stage for performance.
- the Year Level Coordinator and the Assistant Principal didn't take any action.
- he did not like to go to the Assistant Principal above the Year Level Coordinator's head and because she was very busy.
- he felt there was nepotism involved because teacher 1 was the Principal's relative.
- in 2007 he gave documents on student management to teacher 3 but then she had lost them and the teacher felt that her account was incomplete.
- he was doing exactly what the Raymond Lewis system required in sending students out and he had used restorative practices all his working life.
- in sending students out he was notifying the authorities.

In relation to allegation 4(f) about teacher 5 observing a student asleep in his class he stated:

- teacher 5 was not in a position to make such an observation
- he suggested that students might have been praying but that he was not sure about this allegation and that he hadn't had a chance to think about it
- he felt it was not substantial
- he was not completely clear of all the allegations but they were single events and not of a persistent nature.

In relation to allegation 6(a) the teacher said:

- the yard duty map provided at the beginning of the 2008 school year did not indicate where the bus stop was. He said he had no idea where the bus stop would be and there were two 200 metres apart.
- he asked for more details but did not get a reply.
- on the day in question he received a call from China in relation to an international curriculum initiative, the discussion was heated and he got carried away and forgot about his yard duty. When the Principal approached him to remind him of his duty he felt it was discourteous to hang up on his caller.
- the Principal couldn't tell him where his bus duty was but then the teacher noticed there was a special spot.
- he spoke to the Principal the next day and apologised.
- there was no follow up and these were single incidents and the number of occasions is not a repetitive pattern of behaviour.

In relation to Allegation 6(b), the teacher said:

- the Principal and teacher 3 never substantiated these accusations and provided no supporting evidence.
- if he was late he would expect other colleagues to support him but said that he should endeavour to be punctual.
- it was not a serious allegation
- the purpose of a support group was to help him.

In relation to allegation 6(c) the teacher stated:

- it was at the beginning of the year and that student 5 had only been in the class twice and that it takes time to settle in.
- he was late because the class was on a different floor and the traffic was heavy. He said the timetable had been changed five or six times
- the clocks in the school weren't synchronised.
- that he was late.

In relation to allegation 7 the teacher said:

- this occurred at the beginning of the year and that it takes 3-4 weeks to split students in the proper way into the literacy support classes or the language classes.
- there were two classes of 27 and 34 students respectively and that it was difficult for them to settle.
- the student had her back to him and couldn't face the whiteboard. He did not know her name at the time.
- he was not trying to be offensive but just wanted to get her attention.
- he had a recollection that he might have disciplined her in the previous week and perhaps that's why she complained.
- 'big' in Chinese is not offensive; in fact it's a respectful term.
- the incident could have been dealt with in a different way.
- the administration did not take it further at the time.

In relation to allegation 7(b) the teacher stated:

- maybe he had made the comment but he didn't think the boy took offence.
- he was a coach not a policeman.
- these were occasional incidents.

In relation to allegation 7(c) the teacher stated:

- denied that it was true.
- that he asked her if she was okay and did the student want to go to the general office
- he invited her to go and have a drink of water accompanied by another student to ensure she was alright
- there was no administrative follow-up to this matter.

In relation to allegation 8 the teacher stated:

- that he had contributed five units to the Electronic Unit Planner (EUP).
- he didn't print them out and the units disappeared with the end of the EUP.
- he didn't subpoena teacher 2 because she now taught 300 kilometres away.
- the school did not have a suitable printer to print the units.
- that he had completed the Concentric Curriculum model for years 7/8 with teacher 2.
- that once it had been completed it would be placed on the EUP.
- he teaches to VELs but that they didn't have any teaching and learning materials.
- he requested time to develop or collect materials but when that wasn't granted he then spent time on VCE curriculum.
- he needed time to develop something tangible.
- the textbook Ni Hao was fifteen years old and he didn't use it.

In relation to allegation 9, the teacher stated:

- Teacher 3 had overlooked the fact that casual relief teacher (CRT) work had to be assessable
- he left work but it was not required by VELS
- a CRT would not be language trained
- no-one else was accountable in this way.

In relation to allegation 9(b) the teacher stated:

- this was his first support group observation and it was a fantastic lesson and that it was appropriate to change the lesson in order to show what the students had previously learned.
- the support group teachers observed different classes and didn't follow the same classes through. As a result the teachers observing did not know what had occurred in previous classes.

The teacher denied that allegation 9 (c) was true and stated that the handout was consistent with the strategy advice sheet developed by the ESL teachers.

In relation to allegation 10 the teacher stated:

- parents cannot help students at home and the homework always involved 10-15 minutes of language practice and revision of their notes.
- if they finished that then they could go to Language On-Line
- there was no point in making a record in student diaries because he would always write the same thing
- he handed out a timeline for 'Looking for Alibrandi' and asked students to read simple books

In concluding the teacher said he was not the best teacher but he knew many of the Chinese language teachers in Victoria (and provided the approximate number) and that there were many worse than him. As long as he didn't repeatedly make mistakes he was not seriously incompetent. He needed time to bring all his ideas together and was aware he needed improvement.

In cross examination Counsel Assisting took the teacher through his career history. The teacher said he was educated at the Foreign Language Study University which was part of Beijing University. He taught a range of age groups at the Conservatory of Music. He came to Australia in 1990 and undertook a 12 month English course in Melbourne. In 1991 he undertook his Diploma of Education at The University of Melbourne. He then taught Years 7-10 at Melbourne Grammar for 6 months. In 1993 he taught at the Glen Waverley campus of the Victorian School of Languages (VSL) on Saturday mornings and during the week he was the business manager at a cleaning company. In 1994-1996 he taught Years 6-10 at St Joseph's School Geelong. In 1997-2004 he taught predominately in China and also managed a program of language teaching. He also taught travel English at this time. On returning to Australia he taught in the VCE ESL Centre at University High School while continuing to work for the VSL on Saturday mornings. In 2005 he commenced at the school. He completed the 21 units for an MBA at Monash University between 1996 and 2005. In September 2009 he returned to China for 18 months to address some family issues. He said his employment with the VSL continued after his

resignation but when he was about to take up a position with that organisation as an area manager he was told that DEECD had a block of his employment. He was part of the Project Advisory Board at Deakin University and he had begun teaching at Deakin in a part-time capacity during 2006. His work at Deakin was sessional and he taught undergraduate and postgraduate student in the LOTE areas and Diploma of Education students between 2006 and 2009. He was also a sessional teacher in the Community language course at RMIT University. He was employed over three nights per week for 10 weeks.

It appeared that in 2008 the teacher was teaching for the VSL on Saturday mornings, ESL at Deakin University and at the school. He said the teaching at Deakin was very similar to the school. He said that he finished on the Advisory Board in February/March 2011. In April 2011 he returned to Australia from China but then confronted the fact that if he moved beyond a certain pay level with the VSL then an employment block came into effect.

When asked why he resigned in 2008 he said there was a lack of support, the set-up was hopeless and they were not helpful in any way. He said that when the Principal placed him with the support group he was also offered the opportunity to resign but he didn't realise this would lead to a block on his employment. He said he thought of taking up the challenge posed by the support group process but then thought he would be better to resign. When asked if he had encountered problems prior to the allegations the teacher said there were little things, his year 7 class with student 1 in it was difficult and after sending 4-5 reports to teacher 1 and getting no response he became very frustrated. When asked to identify his weaknesses as a teacher he said that he took some issues too seriously and tended to overreact. He needed to be more laidback. He said his cultural background may explain this but he needed administrative support.

When asked about the allegations of yelling and aggression and whether he understood student reactions now the teacher said he had never had a chance to talk to the students and that there would always be a small number who are unhappy. He said he was happy to talk to them if he was given more information. He felt that he only ever sent a small group but there may have been occasions when he sent more. He said his students were not disengaged but they were generally passive learners. He said their English skills needed more time. He said the withdrawal of students from classes were due to a variety of causes but not his teaching. The teacher said that he needed information to validate complaints before he would act on them. When asked about the failure of students to continue Chinese after year 9 The teacher said that the LOTE domain had never sent letters to students to encourage them to continue and had not become involved in that process. He said lots of students do Chinese after year 9. He said that 9-10 students wished to continue but the school would not allow it to run. He said that he had been given these figures by another teacher and had been advised not to raise it with the administration.

The teacher summarised his responses to some of the allegations. He said that he rejected allegations 1 and 2 in total. For allegation 3 he said that it was okay for the students to read English in class and he considered but then rejected the idea of engaging them in other material. He could see no benefit in them doing what the rest of the class was doing

but said they needed English support. For allegation 4 he said his classes were not inappropriately noisy as a general rule. He said he could not remember allegation 4 (f) but he said that many students had to work hard at home. He said that he took responsibility for his professional obligations as all teachers have to. In relation to allegation 6 he took responsibility for being late. The teacher said we are all human and make mistakes. He said if he was physically unwell it was hard to get to class and frequent timetable changes also created problems. For allegation 7 the teacher said students should be treated with courtesy and respect. When asked if he could see it was offensive the teacher said the student was genuine about her feelings but then argued that he was learning as well and it wasn't his intention to cause offence. He said that when he used the term 'little' in February 2008 the boy's body language did not show unhappiness and said that teacher 4 could not be certain either. He said a restorative chat would have solved the problem. He noted he was not a perfect person. He said there was no discussion in the support group which was what he needed. He argued that the support group members lacked professionalism and needed to have a language teaching background. He said he should have left the school earlier and after 20 years teaching the process had made him feel inferior.

In closing Counsel Assisting pointed to that recognition needed to be given to the fact that the teacher was self-represented. Counsel Assisting said that while allegation 1(a) had been withdrawn the context remained relevant. She asserted that the evidence of the Principal and teachers should be accepted. She stated there was evidence about a range of issues including parent and student unhappiness with the teacher's performance, student disengagement with his classes, the teacher's difficulty with management issues and the support groups clear highlighting of the problems. She noted that by the end of July the Principal needed to take action and that his establishment of a support group was done in a proper manner. The support group provided detailed reports and emphasised points for improvement. Counsel Assisting argued the support group did not have a pre-determined outcome. She noted that the support period was very brief because of the teacher's resignation.

Counsel Assisting argued that although the support group's work was brief their comments went to the fundamentals of professional teaching and behaviour. She rejected the idea that a language teacher needed to be involved because she said that the comments they made were fundamental ones and indeed could have been made by any adult. Counsel Assisting noted that she was not downplaying the intricacies of LOTE teaching but this case was about fundamental teaching problems. She stated that to the teacher's credit he showed passion and commitment to his teaching e.g. his extra work at Deakin University and the VSL. She highlighted that the teacher was providing professional development to prospective teachers he was at the same time not properly reflecting on his own behaviour.

Counsel Assisting stated that the Panel had to decide to a 'reasonable' degree of satisfaction but there were areas of dispute. She said the dispute is not about what occurred but the reasons for it. She noted it was proper to consider the cultural background of the teacher however the principle of treating students courteously needed to be upheld irrespective of the teacher's background. She said the facts needed to be seen as a whole and that one matter was not enough. She accepted that the teacher had

apologised but drew attention to the fact that the naming behaviour occurred at a later date and that this showed a lack of empathy on the teacher's part. She said that the VELS curriculum framework had to be implemented by all teachers. Counsel Assisting pointed out the previous Act provided the options including penalties available to the Panel rather than the new legislation. She said that the teacher's lack of representation may have affected his ability to reflect on his behaviour.

In closing the teacher said that he had no objection to reflecting on his behaviour. He was denied the opportunity to do so. He said the allegations had not been substantiated. He said the hearing book was sent to him in April 2011. He asked that the Panel be empathetic to a teacher in his position. He was trying a new approach in 2008 in a new learning environment. The support group had been detrimental to him and there was a lack of communication. He said his expertise was still valuable and that he wanted another chance to pursue his career.

DISCUSSION OF THE EVIDENCE

The teacher chose to represent himself and the Panel made allowance for this. Counsel Assisting explained the process to the teacher prior to and during the hearing and guided him in the framing of his questions. The teacher was advised by the Panel to seek clarification if at any time he was unsure of what was going on in the proceedings. Where the teacher's meaning was not clear to the Panel he was asked to repeat or reword his remarks. The teacher was afforded some degree of leeway in putting his arguments and in cross-examining the witnesses. The Panel had the task of determining whether the evidence demonstrated that the teacher was seriously incompetent and/or not fit to teach.

The Panel found the witnesses credible and honest and gave great weight to their evidence because they were consistent with their written, signed statements. They impressed the Panel as being experienced, even handed and objective professional teachers. They made suggestions in good faith to the teacher for improvement and the Panel thought these to be realistic and achievable. The observation notes written at the time were detailed and established clear patterns in the teacher's practice. The teacher told the Panel that he had withdrawn from the support group because it did not contain a language teacher and as a consequence he doubted the ability of the teacher members to understand the complexities of his language teaching methods. The Panel accepted the view put by Counsel Assisting that while there may be complexities within language teaching, the issues that the support group had been asked by the Principal to focus on were fundamental teaching practices and processes. There was clear and comprehensive documentation in the school policies provided to the Panel that detailed the policies that the teacher was expected to follow.

The teacher provided the Panel with extensive material; however on examination it did not provide any evidence to rebut any of the allegations in regards to curriculum development or implementation. It provided no substantiation that the teacher had completed any in depth application of the VELS structure to his teaching and documentation at the school.

The Panel did not accept that the teacher was suffering from a medical condition that had impaired his teaching ability and accepted the Principal's evidence that it had not been raised with him. The teacher provided the Panel with the results of three pathology tests and two information sheets relating to gout. There was no diagnosis from a medical practitioner that the teacher suffered from any medical conditions, nor was there any evidence led by the teacher that drew a connection between his behaviour and a medical condition. Counsel Assisting submitted that ill-health could not explain incompetence and the lack of a doctor's report made the issue irrelevant. The Panel carefully considered the evidence but found that none of the documents assisted the teacher's argument.

The allegations in this matter were a mixture of what may appear trivial incidents with serious failings. Viewed collectively however they could amount to serious incompetence on the teacher's part. The Panel also had to consider the teacher's understanding of his failings and his capacity, and his willingness to improve his competence and thereby demonstrate his fitness to teach.

Allegation 1

Failed to use a range of teaching and learning strategies, technologies, activities and resources in order to engage students in active learning, including:

- b. Whilst being observed by other teachers in September 2008, talking to the class continuously for 25 -30 minutes without engaging the students and often talking to the class whilst facing and writing on the whiteboard
- c. Having the Year 11 ESL class read the same book, for more than 5 months, in circumstances where the School's other ESL class had already completed reading the book
- d. Pitching the materials in a Pastoral class on 12 September 2008 at too high a level, which caused the class to become disengaged

In relation to allegation 1(b), the Panel heard evidence that the teacher would spend considerable periods of time writing on the whiteboard. The teacher argued that on the day he was observed by Teacher 3 to be writing on the whiteboard for 20-25 minutes that he was in fact writing up the requirements for a piece of School Assessed Coursework (SAC). The Panel saw this as a poor teaching strategy because of the time not spent on active teaching and learning and the Victorian Curriculum and Assessment Authorities (VCAA) requirement that students be provided with a written copy of the SAC requirements. While the Panel could imagine a teacher using a whiteboard at the VCE level to illustrate concepts or develop a Mindmap etc in consultation with students, The teacher's behaviour suggested a lack of preparation on his part and his explanation was not indicative of good practice for a teacher of the Victorian Certificate of Education. The Panel found this allegation substantiated but believed this may have been an error of judgement on his part rather than serious incompetence because there are occasions when using a whiteboard in this way might be warranted and it did not appear to be a regular feature in his classes.

In relation to allegation 1(c), the Panel was provided evidence that the year 11 class had read one book for more than five months and teacher 3 indicated that the students had still not finished it. The teacher suggested that in fact it had only been two months. He

argued that because of the students' language weaknesses it was better that they read to improve their English and he made them start much earlier to allow them to complete the novel. The other teacher's class at the same year level was completing the novel in a significantly shorter timeframe. There was no evidence that the teacher checked on the students' progress but evidence that they were ignored in the class. There was no evidence that the teacher discussed his approach with the other teacher of the novel and the Panel discerned a developing trend in the evidence of the teacher's behaviour where he appeared to operate without reference to colleagues, the administration and the curriculum and management structures of the school. The Panel substantiated this allegation and found that it was a substantial departure from proper teaching practice and amounted to serious incompetence. It was an error on the teacher's part to a serious degree and it fell into a pattern of behaviour indicative of an inability to prepare or implement meaningful lessons.

In relation allegation 1(d) the Panel was shown a *Study Hints and Tips* handout for students in the teacher's pastoral care year 9 class. This document appeared to be quite detailed with some complexity in terms of ideas and language. The Panel was of the view that it would be more suitable for senior students. While it could be used with younger students it would have needed to have been broken into smaller units of work with simpler language and delivered by the teacher with a clear idea of how much younger students could be expected to take in. As it was the handout appeared to the Panel to be a piece of work prepared for older students and used by the teacher in an inappropriate way. While the teacher argued that it was teacher 5's role to prepare the material for class the Panel believed that it was every teacher's responsibility to adapt and modify materials that they were delivering in the light of the particular class and year level. The Panel accepted teacher 5's statement that he prepared some guidelines and some exemplars that teachers could then adapt for particular circumstances. The Panel was of the view that the teacher's use of these materials would have not been meaningful for younger students and could lead to student disengagement. The Panel found the allegation to be substantiated. The Panel thought this was another example of the teacher failing to impart knowledge and amounted to serious incompetence because it fell into a pattern of failing to provide any worthwhile student activities and implementing inappropriate student activities.

Allegation 2

As a result of failing to use a range of teaching and learning strategies, technologies, activities and resources in order to engage students in active learning:

- a. Students were observed by other teachers not to be engaged in active learning
- b. Students requested to be removed from the study of Chinese during the school year
- c. Students elected not to continue with the study of Chinese

In relation to allegation 2(a), there were many observations by teachers in the support group that the teacher's students were disengaged. Teacher 3 gave evidence in her witness statement that students were not engaged in the teacher's classes. Teacher 4 observed some students in the teacher's class as disengaged, asleep or not paying attention. Teacher 5 stated after observing the teacher's class that he appeared to be going through a routine and there was a disconnect between himself and the students. The Panel found these witnesses to be unbiased and reliable providing factual

observations that substantiated the allegation. The Panel found substantial evidence that the teacher failed to use a range of teaching and learning strategies, technologies, activities and resources in order to engage students in active learning. There appeared to be no display of material, poor record keeping, no proper supervision of students, a steady stream of students being ejected from class and then a lack of follow-up. The Panel found that these student behaviours were frequent in the teacher's classes and occurred because of The teacher's lack of attention to his professional obligations.

In relation to allegation 2(b), the Principal stated that nine or ten student requests for removal from Chinese classes had been made. This figure appears to have come from an email from the Director of Learning in July 2008 in an email to the Principal where she said in evidence that over ten student and parent requests to be removed from the teacher's classes was anecdotal and an estimation rather than 'hard'. The letter from the parents of student 1 was provided in evidence to the Panel. The Principal believed these student requests were directly attributable to the teacher's poor teaching practice, his inability to engage students and his poor management practice. In the Panel's experience individual students from time to time will request to be removed from a teacher's class for any number of reasons but when there are multiple students requesting to be taken out it indicates serious issues with a teacher's performance. The Panel was concerned, however that while the letter from student 1's parent provided clear evidence of one parent's unhappiness with the teacher there was insufficient evidence to substantiate the allegation.

In relation to allegation 2(c) the Panel was asked to accept that the reason there were no Year 10 Chinese classes was because of the teacher's incompetence. The teacher argued that approximately ten students wanted to continue to Year 10 but he was unable to provide any evidence for this claim. He also offered the explanation that there is a Victoria wide slump in the number of students taking languages and this trend was reflected at the school. The Principal indicated that a number of languages had been tried at the school over the years in an attempt to have continuity of a language taught from Years 7-12. The Panel was also aware that there was another teacher of Chinese teaching at Years 7-9. Having heard of a significant range of factors which might have affected student subject choices in Year 10, the Panel was reluctant to conclude that the teacher was the cause. The allegation was therefore not substantiated.

In relation to allegation 3 the teacher argued that these observations referred to only two or three students in a year 9 class who were newly arrived and non-English speakers. They were passive and lacked confidence. They could begin ESL English in year 10 but until then they needed to build up their English skills and there were no literacy classes available. He said by allowing them to read English books he was catering for their individual learning needs as a short term measure only. He said he had no objections to this approach despite telling other teachers so. A number of teachers commented on the teacher's approach to the non-English speakers and his way of dealing with them. Teacher 5 recommended to the teacher after an observation on the 17th September 2008 that he needed to engage these students more. On the 6th October 2008 he noted that the teacher took forty minutes before he even acknowledged the non-English speakers in his class. Teacher 5 noted that he saw no setting of tasks for non-English speakers; the students would sit at the back and talk quietly while the teacher had little conversation

with them at all. At the post-observation discussion the teacher said he allowed students to do private study and that they were better off doing English work.

The Panel viewed the teacher's hands-off approach to the non-English speakers as inadequate. The Panel could find no evidence to support the teacher's view that the approach he adopted was supported by other staff. In fact it was quite the opposite with staff indicating that he needed to engage these students. Even at the hearing it was apparent that the teacher could not see the need to teach these students but believed he was justified in leaving them to read at their own speed without input or monitoring from him. The Panel found that the teacher had failed to complete a basic requirement of his job, that is, catering for the needs of all the students in his class and when confronted about this elemental teaching practice did not take the opportunity to change. The teacher was not taking responsibility for impart knowledge to these students but abrogating his responsibility in a way that indicates serious incompetence. It appeared to be a pattern in the teacher's teaching and an approach he believed was justified. The teacher insisted during the hearing that it was still an appropriate teaching practice and the Panel thought this reflected a lack of insight into his behaviour. The Panel did not accept that he had the support of his colleagues in this practice and indeed the teacher appeared to have a lack of communication with his colleagues. The Panel found that the teacher's unwillingness to accept responsibility and change his teaching practice indicated a lack of fitness to teach. It was noted by the Panel that the teacher frequently said that he was keen to improve and that he needed support but his actions suggest that he ignored suggestions and persisted in a pattern of behaviour that destroyed whatever trust existed between him and other staff. After being given practical suggestions by his support group the teacher failed to implement them and ceased his involvement indicating he did not wish to change his behaviour. The Panel found this allegation substantiated.

In relation to allegation 4(a), the Principal gave evidence that he had heard the teacher yelling in class and that colleagues had complained of noise from his class and that classes from some distance away had complained about the noise. These complaints were supported by teacher 3. In Term three 2008 she located the teacher's classes elsewhere in the school so that other classes would not be disturbed. The Principal characterised the noise from the teacher's classes as noise that was not productive and not indicative of cooperative learning. On the other hand when teacher 5 was asked to comment on the noise levels from the teacher's class he said that he may have heard yelling on occasion, but nothing out of the ordinary. The teacher said that the noise came from students being excited and the use of group practice and repetition. He stated that the open spaces made it an issue. He said the open area was okay for book work but not verbal work. He said he asked two learning area managers about how other schools dealt with the issue of noise but they were not helpful. The teacher felt that the noise level did not stop the imparting of knowledge. He felt the problem was made worse by having graduate teachers who did not understand how to teach in open areas. The Panel found this allegation substantiated, but that it did not reach the level of serious incompetence. In relation to allegation 4(b) the Panel found that there was no direct evidence of the teacher throwing pens and pencils at students. Teacher 1's statement did not mention the teacher throwing things at students nor did he mention it in his oral evidence. The Panel was reluctant to accept evidence from a meeting of twenty students called by

teacher 1 in which they were invited to comment on his performance. No written summary of the meeting was provided and even teacher 1 was aware of the dangers such a meeting posed in terms of gathering reliable evidence. The Principal said that teacher 1 had reported to him that students had things thrown at them. The teacher agreed that he had thrown an eraser at the glass door at the back of room F9 to gain the attention of inattentive students but he strongly denied ever throwing things at students. The letter from student 1's parent requesting student 1 be withdrawn from the teacher's class is based on a conversation with student 1 and it corroborates the teacher's statement but also suggests that the thrown object narrowly missed a student. The Panel found that the evidence supporting this allegation was limited and hearsay. The Panel was of the clear view however, that throwing objects in class whatever the teacher's frustration level or the student behaviour is not appropriate and can only lead to range of unintended negative consequences, not the least of which is the creation of a classroom based on physical intimidation and high student anxiety. The allegation was not substantiated.

In relation to allegation 4(c) and 4(d) teacher 3 gave evidence in her witness statement that she was alarmed at the number of students the teacher sent out of the class and even described one particular class as chaotic. Teacher 1 said that he would regularly have one or two students sent to him each lesson sometimes accompanied by the teacher. The teacher told teacher 1 the students were uncontrollable. Sometimes students were sent without explanation. Teacher 1 said that he had difficulty having a discussion about the students and stated in his oral evidence that he felt that the teacher was avoiding him. No evidence was provided that the teacher kept students behind or took other opportunities to discuss their behaviour despite him claiming that he was willing to do so. The teacher said that he followed the school management practices but he said that the issue of student misbehaviour was ongoing and that he should not have to repeat himself or say it every single time. He said that no-one addressed the issue with him and the year level coordinator and assistant principal did not take any action. The Panel considered that in the circumstances the steady stream of students out of the teacher's class would have created issues for the different managers and the general atmosphere of the whole learning area. The Panel came to the view that the teacher wanted the managers to solve all his management problems and that he was not taking responsibility for his own classes. There was very clear evidence of the year level coordinator trying to engage with The teacher and being ignored and that before taking action he quite rightly was trying to satisfy himself of the facts of the situation. The Panel found this allegation substantiated and it indicated a poor relationship with the year level coordinator. It also provided evidence of poor student-teacher relationships and the teacher's unwillingness to develop positive relationships with all his students. He appeared, despite his outlining of the management process he followed in class, to be quick to hand responsibility for difficult students to others but then not provide sufficient information to enable a long term solution to be developed. At the hearing the teacher still appeared to lack the necessary insight that he had the first responsibility for management problems in his class.

In relation to allegation 4(e) teacher 3 gave evidence that around 2005-6 she had facilitated a restorative chat between the teacher and a student. She noted that in her view it was highly successful. The Panel took from this that the teacher understood the nature of this process within a management structure and that it was beneficial to both him and the student. Teacher 3 said that after that time she did not observe the teacher

engaged in restorative chats with his students nor did he request assistance from teacher 3 to conduct any. There was a great deal of evidence of the number of students being sent from the teacher's class and the Panel inferred that this indicated, at least for some students, a breakdown in their relationships with the teacher. The Panel could find no evidence that the teacher took the time to sit down with students out of the hurly-burly of the classroom to gain deeper insights into students thinking and behaviour and to use the restorative chats to rebuild student-teacher relationships. While the Panel could appreciate that these could be time consuming and awkward to timetable, the level of student misbehaviour and the indications from year level coordinators and assistant principals should have alerted the teacher to the need to become more pro-active in addressing these pressing issues which were impeding the imparting of knowledge to his students. The Panel could find no evidence that the teacher took part in a restorative chat in 2008, rather that he resisted attempts to engage with his students about poor behaviour. The teacher claimed that he had used restorative chats all his life and in notifying the authorities he was following all the steps. He said that sending students out of class was part of the process. The Panel found this allegation substantiated and did not accept the teacher's proposition that he was following all the steps of the student management process. The Panel was of the view that for whatever reason the teacher was reluctant to spend time on restorative chats because he believed he shouldn't have to because it was other colleagues' responsibility. In this matter the Panel believed that the teacher's attitude reflected a lack of insight into the way his behaviour impacted on students and other staff and his wilful disregard for the process put in place by the school amounted to serious incompetence. The teacher indicated that he claimed that he was filling in the appropriate documentation but then said that he wasn't because it was a repeat of previous behaviours. The Panel found a lack of candour and consistency in this and other evidence the teacher provided where he would admit to the allegation at one point and then at another point dispute it. This was often coupled with an attempt to put responsibility on to his colleagues and excuse himself. The Panel thought that the teacher's continuing lack of insight and his unwillingness to accept responsibility for his actions revealed serious questions about his fitness to teach.

In relation to allegation 4(f), there was direct evidence from teacher 4 and teacher 5 of students sleeping in the teacher's class. Teacher 5 stated that the teacher took fifty minutes in a lesson before he attempted to wake a student up. The teacher said that teachers observing could not see students sleeping from their position in the class. He suggested that perhaps the students had their heads down or they were praying. He said that he had not had a chance to think about this allegation and he was not sure about it but in any case it was not a substantial matter, they were single events and not of a persistent nature. The Panel found this allegation substantiated and that it amounted to serious incompetence because when a student is sleeping there is no imparting of knowledge occurring, no communication and a teacher's inaction sends a very negative message to other students. The Panel found the teacher's various explanations completely unconvincing and indicative of a lack of insight on his part into the proper role of a professional teacher.

In relation to allegation 6(a), the Principal stated that the teacher had failed to meet his timetabled yard duty obligations. On one occasion the teacher had not been in his allocated position and the Principal found him in his office engaged in a telephone call.

The teacher admitted that on this occasion he had become involved in a heated discussion on the phone and forgotten about his yard duty and that he did not want to be discourteous to the person on the phone by ending the call abruptly. He said that he was not provided with a map to show him the location of the new bus stop. He said he apologised the next day and there was no follow up. He argued that this was just a single incident.

The Panel was of the view that this lateness to bus duty was indicative of a cavalier attitude towards his professional responsibilities and was also connected to the allegations about his lateness and absences from classes. The teacher had a duty of care to students and he abrogated it. The teacher did not take the time to familiarise himself with the area of his bus duty despite the Panel's belief that he was at the staff meeting where the principal emphasised the importance of staff being on duty. It is no excuse for the teacher to say that, having not prepared himself adequately beforehand, it was for other people and the Principal to tell him where to go, he could not find a map and it was a bad place to put a bus stop. The teacher appeared to have a displaced sense of responsibilities and priorities in that he thought it was more important to sit inside and take a phone call on an international Chinese teaching curriculum rather than be in his designated position ensuring students were safe. The Panel came to the view that The Principal's evidence could be relied on and the allegation was substantiated. The Panel was of the view that there were repeated instances of the teacher's neglect to supervise bus/yard duty and the consequences of this could be very serious. The Panel is of the view that this role was a fundamental requirement of the job and the teacher's repeated failure to perform it was indicative of serious incompetence because of the potential consequences of his non-attendance.

In relation to allegation 6(b), the Panel heard considerable evidence that the teacher was frequently late and often left his classes unattended. Teacher 3 said there were 'many times' when the teacher would arrive five minutes late for class. Teacher 5 was understandably surprised when the teacher was twenty minutes late for a class that had been previously organised to be observed by teacher 5 as part of the support group. The Panel found the teacher's excuse that he had misread the timetable unconvincing. The teacher then agreed that he was late but also argued that the allegation had never been substantiated. He stated that it was the role of his colleagues and the support group to cover for him by taking the class until he arrived or to send students to look for him. The Panel was troubled by the inference in the teacher's thinking that it reasonable for other staff to cover up for him when he failed to perform his professional responsibilities. In the Panel's experience occasional lateness by a teacher will find them supported by a colleague if it does not become a pattern and the supportive teacher is not being asked to act unethically. The evidence suggests that the teacher's behaviour was resented by the witnesses and seriously eroded their professional respect for him. The Panel found this allegation substantiated and his repeated lateness amounts to serious incompetence and his expectation that other teachers will cover for him indicative of a lack of fitness to teach.

In relation to allegation 6(c) teacher 7's incident report written at the time clearly records the teacher as being ten minutes late. The evidence of the physical altercation was also described clearly. The Panel accepted this evidence and found the allegation

substantiated. The Panel was also of the view that this was a regular habit of the teacher's and the fight between students was a consequence that any professional teacher should foresee. The Panel was of the view that it is a professional obligation of teachers to supervise students properly and if they do not they are responsible for the consequences. If the fight had broken out when the teacher had been in attendance he could have played a role in defusing it or otherwise mitigated the very serious consequences that occurred because of his absence. The teacher admitted that he was late but the various excuses he offered in mitigation e.g. that the student traffic was heavy, that the clocks in the building were not synchronised, and the timetable had been changed five to six times, were not accepted by the Panel. The Panel believed that professional teachers are very good at anticipating interruptions and problems that occur from time to time and plan adequately so that they are in the right place at the right time. The Panel found that the allegation was substantiated and regarded it as serious incompetence because it arose from a pattern of lateness over an extended period of time and it could lead to a lack of trust amongst parents, teachers and students that the teacher was able to perform the duties of a teacher.

In relation to allegation 7(a), it was accepted by the teacher that he had indeed made the remark and committed himself to apologise for it although the Panel did not hear evidence that the apology was delivered. The teacher's statement that the students were having difficulty settling and he was having difficulty getting the student's attention did not justify him departing from the need to treat students with courtesy and dignity. In this context of a noisy inattentive class the teacher's suggestion that he used 'big' as a respectful term in Chinese culture make little sense. While he complained that he was not trying to be offensive the Panel found that out of frustration he drew attention to a student's physical shape to humiliate her into silence and compliance. The Panel could find no evidence to support the teacher's view that the student had complained because he had disciplined her out of the classroom previously and that was the reason for her complaint. While the Panel could accept that a one-off incident like this could be dealt with by way of an apology and a commitment on the teacher's behalf to not use this type of language again, allegation 7(b) at a later date suggests he had learned little.

Teacher 4 witnessed this second event and talked to the teacher about the potential for causing offence. The teacher said he did not think the boy took offence and these were isolated incidents. The Panel believed the teacher lacked insight into how adolescent students thought and how sensitive they could be about matters related to their bodies. It is a normal expectation of teachers that they be very aware how sensitive adolescents can be in matters of body image and the Panel was disappointed that the teacher seemed to lack this insight. The Panel found that allegation 7(a) and 7(b) were substantiated but accepted that allegation 7(a) on its own did not amount to serious incompetence. However, in considering the teacher's behaviour in the two allegations collectively the Panel considered it part of a pattern of serious incompetence.

In relation to allegation 7(c) the Panel found that the evidence had arisen in a group meeting convened by teacher 1 of which no written record exists. There was no statement from the students and the Panel had already expressed its reservations about the context and nature of the evidence that was collected. The Panel held that this allegation could not be substantiated.

In relation to allegation 8(a) the teacher provided the Panel with extensive documentation regarding VELs but the Panel could find only one handwritten sheet outlining a list of topics for Year 7 classes and no topics for year 8. The Panel could find no application of VELs to the delivery of the teacher's classes or any indication of catering to different levels of student ability. In fact, previous proved allegations showed that the teacher effectively ignored non-English speaking students in his classes. The teacher's claim that he had written five units of VELs based work for his classes and placed them on the EUP was not accepted by the Panel. The Panel believed that teachers of the teacher's experience would have kept copies of work that would have taken some time and skill to complete and that his claims were not believable. The teacher said that he had requested time to put all the materials together but this had been rejected. The Panel was also aware that the teacher had been given four periods per week as the head of the LOTE domain and one of his responsibilities was to ensure curriculum guidelines were developed and fleshed out for the particular needs of students at the school. The Panel substantiated this allegation and found that it amounted to serious incompetence.

In relation to allegation 8(b) the Panel was provided with lesson plans provided by The teacher for the observations by his support group. The Panel believed these were generic and often similar for each class. While there was familiarity with VELs terminology the Panel could find no application of VELs to individual circumstances and classes. Teacher 3 testified that she doubted that the teacher understood VELs sufficiently and this was a problem she had alerted him to as early as 2006 and certainly 2007. The Panel found this allegation substantiated and that it amounted to serious incompetence because The teacher had been warned about what he needed to do some years before and an inability to interpret and implement the appropriate curriculum guidelines is a failure to a high degree. The Panel also thought this reached the level of 'serious' because it is inexcusable that a teacher would not have a clear idea of the curriculum structure provided by VCAA; how it meshed with previous and future learning; and how teachers had to tailor the structure to meet the needs of individual students in their classes. Teachers were also entitled to believe that their colleagues were preparing students properly. The Panel also believed that parents and students should be able to trust teachers and rely on them to deliver a planned, coherent curriculum that was publicly available.

In relation to allegation 8(c) the Principal observed the teacher's markbook and found only a series of ticks. However there was no other evidence led on this allegation. The Panel found the allegation could not be substantiated.

In relation to allegation 9(a) teacher 3 said that both she and teacher 1 had concerns about the teacher not leaving work for his students when absent. While it could be argued that leaving a video showed some preparation for his absences the Panel believes that experienced teachers like the teacher should know that leaving a video with little guidance for the supervising teacher is not helpful in building student engagement or imparting knowledge. It appeared from the evidence that in many cases the teacher left nothing for his classes. The teacher's response was to say that it was not possible to leave work for his classes because he would not be replaced with a language teacher. The Panel found this allegation to be proved. The teacher argued that any work he left had to be assessable and he appeared to have difficulty grasping the idea practiced in the vast

majority of schools that it is possible to leave work which could be implemented by another teacher. There are many good practical and policy reasons why absent teachers leave work for their classes. The teacher's unwillingness to leave work was a severe dereliction of his duties and appeared to the Panel to contribute to a pattern in his behaviour where he believed he was entitled to be unaccountable to his colleagues. This was one of a series of allegations that collectively contributed to the Panel's finding of serious incompetence on the teacher's part.

In relation to allegations 9(b) (i-v) they all relate to one observation of a year 7 Chinese class by teacher 3 on 4th September 2008. The teacher argued that his reason for changing his lesson plan was to show what they had learned. The Panel thought this was unusual because he did not tell teacher 3 of his plans to change and he knew that the planning and delivery of his lessons was a focus that teacher 3 was being asked to comment on. Considering that the teacher's performance had been put under the spotlight the Panel considered that it would have been more prudent for the teacher to have liaised with teacher 3 beforehand and either submitted a new plan or told her of his modified plan. A discussion with teacher 3 would also have indicated that the teacher was taking the observations seriously and given him an opportunity to develop a professional dialogue with a colleague who clearly wanted to assist him. The Panel found the teacher's casual approach in this matter, his unwillingness to become involved and engaged with the support group and his ultimate withdrawal from the process puzzling.

The teacher argued that the allegation of a lack of sequencing in his classes was false but the Panel believed that he had misunderstood teacher 3's comment that the class she observed lacked a proper sequence of activities. The Panel found allegation 9(b)(i) substantiated and found that it amounted to serious misconduct because it would have allowed the observing teacher to match his intentions with his practice and to assess his skill in doing so. While it might be perceived to be an error of judgement the Panel interpreted the teacher's actions as an attempt to conduct a lesson which in his mind would show his skills as a teacher. In making this decision he was ignoring the issues that had been raised and failed to demonstrate that he could plan and deliver a lesson. The Panel accepted teacher 3's observations as evidence that the teacher did not sequence the lesson properly, he did not relate the class activities to each other, lacked sufficient class activities to last seventy minutes and did not communicate the aims of the lesson to the students. The Panel found that allegations 9(b) (ii-v) were substantiated. Even though this was only one class the Panel found that it amounted to serious incompetence because these tasks are basic to a professional teacher's work whether they are teaching a Chinese language class or any other class. That the teacher was not able to demonstrate these skills as a matter of course indicated serious incompetence and contributed to the Panel's findings that the allegations when considered collectively to amount to serious incompetence. The Panel also found that the teacher's approach indicated that there were serious issues regarding his fitness to teach because his collective flaws did not appear to be addressed even when he was placed in a position where he was observed by experienced teachers to see if he could demonstrate basic teaching skills. The teacher appeared to be unshakeable in his belief that his teaching practice was of a high standard.

In relation to allegation 9(c), the Panel compared the task the teacher had provided to his Year 11 ESL class and the strategy plan developed by the group of ESL teachers. The Panel

could find few links with the plan and the Panel thought it another indication of the teacher's lack of commitment to his colleagues and the directions they had set after discussing the issue. The teacher denied this allegation, but the Panel found it was substantiated. A well documented characteristic amongst professional teachers is the need for and the importance they place on mutual trust and collegiality. In departing from the ESL plan the teacher showed scant regard for the effort his colleagues had put into developing the plan for students' benefit. The Principal commented in his letter dated 1 August 2008 that the teacher had contributed very little to the ESL strategy to the point where despite repeated requests he had still not responded in May 2008 despite being asked to do so in February 2008. In this regard the Panel was of the view that this led to a finding that the teacher was seriously incompetent and his disregard of his professional obligations further contributed to the Panel's view that the teacher was unfit to teach. Indeed the Panel was concerned that over a considerable period of time the teacher habitually ignored many of his professional obligations and lacked insight into how his behaviour was affecting others.

In relation to Allegation 10, the Panel accepted that the teacher did not check completed homework or have proper records of students' homework. The teacher argued that this was reasonable because parents could not help at home and that the homework he set was always the same so there was no point in writing anything down in a students' diary. The Panel thought this was another example of the teacher making decisions without reference to colleagues and school policy. It also indicated that it did not occur to him that a student's diary could be used to vary homework requirements for different student needs, communicate with parents or assist him to build up a picture of a student's work habits. The teacher appeared in this and in many other matters to believe that he could operate without reference to anyone except himself and he was the sole arbiter of what was best for students. The Panel developed the view that in fact the teacher was derelict in his approach to his professional obligations and appeared to be distracted by the range of commitments he had outside of the school. The Panel substantiated this allegation.

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 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 *Brown* [2005] VIT 19.

In the matter of the *Gordon* [2009] VIT 92 the Panel 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 *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 frequently that it reflects 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). There is a duty on all teachers to achieve and maintain an appropriate level of competence and care.

Fitness to teach

In relation to “fitness to teach” the Panel was guided by the decision of *Davidson v Victorian Institute of Teaching* [2007] VCAT 920 where the Tribunal considered factors relevant to whether the teacher’s conduct 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 are 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 is 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 (*Siguenza v Secretary, Department of Infrastructure* [2002] VSC 46).

In the matter of *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 allegations 1(b), (c), (d), 2(a), 3, 4 (a), (c), (d), (e), (f), 6(a), (b), (c), 7(a), (b), 8(a), (b), 9(a), (b)(i-v), (c) & 10 proven. Those allegations collectively amounted to serious incompetence on The teacher’s part and illustrate that The teacher had serious deficiencies in:

- selecting and using suitable classroom material
- student engagement and assessment
- catering for the needs of individual students
- student management
- punctuality to class and attendance at yard duty
- treating students with courtesy and dignity

- understanding, implementation and application of VELS
- provision of work for his classes in his absence
- working collegially to implement school policies and strategies

The teacher claimed that the allegations stemmed only from the period he was observed by his support group and that they were trivial. He argued that given that they occurred over such a short period that they did not satisfy the test for serious incompetence. The evidence shows that the principal and his colleagues had concerns about his performance since 2006 and that the teacher either ignored or avoided confronting the identified issues.

In the Panel's view had the teacher been performing competently in the period leading up to the observations in 2008 it would have been a relatively easy matter for him to have shown that he engaged with students, provided the appropriate curriculum documentation, been punctual and satisfied his many other professional obligations. Through his own behaviour the teacher was placed into a formal period of observation by the principal who then used a number of experienced staff to formally identify and provide direct observations of the serious deficiencies outlined above. When he was confronted with his failure to complete fundamental teaching tasks the teacher's defence was that the allegations were trivial and that it was every other person's fault and responsibility except his own. When provided with advice he ignored it.

The teacher's response was illuminating because he made no attempt to implement what, to the Panel appeared to be sensible, realistic suggestions for improvement. During the period of observation he continued to be late, unprepared and taught in what the experienced, unbiased teachers observed to be below the expected standards of a professional teacher. At the hearing the teacher often refused to accept that he had acted inappropriately and attacked students and colleagues in the most personal and offensive ways. The teacher consistently blamed others for his predicament and refused to confront the fact that it was he who had abrogated his professional responsibilities. In this he showed a lack of insight into his behaviour. The Panel found that the teacher had developed a range of avoidance strategies indicated by his sending of so many students out of his classes so colleagues had to deal with them, ignoring requests for meetings or documents and failing to work collegially with others. He was ineffectual in his role as domain leader because he was derelict in his professional responsibilities.

DETERMINATION

The Panel believes the teacher's serious incompetence was of a continuing and persistent nature and extended into all areas of his work. On the other hand there was evidence that The teacher had apologised to a student he had offended; he had been very successful in a restorative chat in the past; he had attended and contributed to school camps; his VCE results were outstanding and the recognition that he had been given by a range of professional associations and tertiary institutions would suggest that at some times the teacher had been capable of being a teacher of competence who recognised and acted on his professional responsibilities. The Panel had to consider:

- that the teacher had only been teaching in Australia since 2005

- the period between 2006-07 when concerns had been growing about the teacher's performance
- the relatively short period in 2008 when the teacher's approach had been closely scrutinised and serious issues were identified.

The Panel found that the teacher's teaching practice in 2008 was deeply flawed but on balance the Panel did not believe that his position was irretrievable. In deciding on a suspension rather than a cancellation of his registration the Panel considered the totality of the teacher's teaching career in Australia and opened the way for him to prove in the future that he could be competent and fit to teach by imposing conditions on his registration. The Panel is aware that fulfilling these conditions will not be a simple matter for the teacher. However, given the nature of the findings the Panel believes them to be wholly justifiable.



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GARRY SALISBURY, CHAIRPERSON



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per:
ANNE FARRELLY, REGISTERED TEACHER



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per:
ROWLAND RICHARDSON, REGISTERED TEACHER