

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 109

REGISTERED TEACHER: Bhupinder Singh

PANEL MEMBERS: Jane O'Shannessy, Chairperson
Kevin Pope, Registered Teacher
Marilyn Mooney, Registered Teacher

ATTENDANCE: The teacher was not represented and did not attend the Hearing

Alanna Duffy, Counsel Assisting with Ms Lucy Turonek
Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 30 March 2011

DATE OF DECISION: 8 April, 2011

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 8 April 2011 the Panel found that Bhupinder Singh had engaged in serious misconduct and is not fit to teach and determined to cancel his registration from 8 April 2011.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 21 January 2008.

By letter dated 31 August 2009 the employer notified the Institute that they had taken action in relation to alleged serious misconduct and/or lack of fitness to teach of the teacher.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 14 October 2009 and the Committee decided to refer the matter to an investigation.

On 21 July 2010, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

On 7 May 2010 the teacher's registration was suspended due to non-payment of registration fees.

On 25 August 2010 the Committee decided to continue with the inquiry.

A Notice of Formal Hearing dated 22 February 2011 was served upon the teacher by registered post on 23 February 2011.

THE ALLEGATIONS

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

The allegations

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

- a) engaged in serious misconduct by engaging in the conduct referred to in paragraphs 1 to 2 (inclusive) below.**

Further or alternatively:

- b) by reason of the acts referred to in paragraphs 1 to 2 (inclusive) below, is not fit to teach**

- 1. In 2008, you failed to maintain a professional relationship with Year 10 Student, student 1, by engaging in communications and/or contact without a valid context:**

- a) In Term 4 you wrote a letter to student 1 without a valid context.
 - i) The letter was provided to student 1 after being requested to see you over the school loud speaker.
 - ii) Student 1 attended at your classroom and the letter was provided to student 1 only after students had left your classroom and you had closed the classroom door.
 - iii) The letter contained comments such as:
 - (a) "You have the most beautiful eyes."
 - (b) "It is okay for you to have a crush on me."
 - (c) "If you were 18, I would ask you to be my girlfriend."
 - iv) Student 1 asked if she could keep this letter from you and you refused and said that you could "get into trouble".
 - v) You provided student 1 with your personal email address and advised student 1 that she could contact you.
- b) Towards the end of Term 4 a photograph was taken of student 1 with yourself and another student and you:
 - i) Requested that student 1 develop and provide you with a copy of the photograph.
 - ii) Made remarks to student 1 about her relationship with another student including:
 - (a) "You don't need a boyfriend at your age".
 - (b) "He will be trouble".
 - (c) "You can do better than that."
 - iii) Asked student 1 if she was going to email you whilst you were overseas.
 - iv) Obtained student 1's mobile number from another student.
 - v) Contacted student 1 via student 1's mobile on or about 15 December 2008 or 17 December 2008 to request that she give you a copy of the photograph.
 - vi) Drove student 1 and two other students down the street following student 1 providing you with a copy of the photograph.
- c) On or around 15 December 2008, you telephoned student 1 on her mobile number without a valid context:
 - i) You obtained student 1's mobile number from another student.

- ii) You refused to explain to student 1 how you had obtained her mobile number.
 - iii) You advised student 1 that she could not store your mobile number under your personal name.
 - iv) You requested that student 1 delete your mobile number after one week.
- d) On or about 17 December 2008, you telephoned student 1 on her mobile number without a valid context and discussed with student 1:
- i) Student 1 crying in class.
 - ii) Student 1's relationship with her mother.
 - iii) You asked student 1 if she was going to email you whilst you were overseas.
 - iv) You told student 1 that you were only coming back from overseas for her.

2) In 2009, you failed to maintain a professional relationship with Year 10 Student, student 1, by engaging in communications and/or contact including the sending of text messages, without a valid context:

- a) On or about 1 January 2009 you sent a text message to student 1 stating: "Happy New Year, student 1! I wish all your dreams come true this year."
- b) On or about 30 January 2009, whilst student 1 was working at the supermarket outside of school hours, you made statements to student 1 about her appearance:
 - i) "Student 1 looks different" and "in a good way".
- c) On or about 31 January 2009, you sent the following text messages to student 1:
 - i) "^^E^@^Cf^B^Aah.. man this school is never nice to me, I got you B and your third friend in my PC class. And more over I got your boyfriend in that class"
 - ii) "^^E^@^Cf^B^B as well (good news for you). Damn everyday."
 - iii) "Coz that class also got your boyfriend in it."
 - iv) "Coz he will be angry if you still having a crush on me."
 - v) "Does he know we contact each other don't lie please. I got informers if you lie."
 - vi) "It means if you lie you will be caught."
 - vii) "^^E^@^Cg^B^Al don't mind you having my no, you are i good girl. I trust you that's why you got my no. No other girl student have it. I come back coz of a promise I mad."
 - viii) "^^E^@^Cg^B^Be to you believe me no other reason student 1."
 - ix) "May be different hairstyle, I didn't reconised you. But you were looking good."

- x) "I lost that pic we did last year, mom took it and placed it on a top shelf me our display unit in the lounge room. She liked it."
- d) On or about 3 February 2009, you sent the following text messages to student 1:
- i) "I couldnt reconise you today as well, i marked you absent but clarified it later. So Hows life and school?"
 - ii) "Wats that?"
 - iii) "So wat you want me to come there and see you dancing with someone?"
 - iv) "I never said no to you so if you want me to come I will. who is your arts teacher. I also got something for you from my trip."
 - v) "Something you year on hand and with bit of diamonds."
 - vi) "Did I ever joked with you?"
 - vii) "No."
 - viii) "A bracelet."
 - ix) "Why cant you accept that?"
 - x) "Oki that's fine. And thanks for thinking of me as well. Will show it to you and if you wanna keep it nobody needs to know who gave it to you."
 - xi) "Will have a chat tomorrow. Keep deleting my sms'7. You are lovely girl."
- e) On or about 4 February 2009, you sent the following text messages to student 1:
- i) "You not in school today?"
 - ii) "Wat happen? Oye is the new teacher miss."
 - iii) "If you want i will have a chat with her, about your arts. Will say nothing about you."
 - iv) "Just to ask questions and check work individually. I will say i came across this during my linx class thats it. Dont worry i always take care me you."
- f) On or about 5 February 2009, you sent the following text messages to student 1:
- i) "If you wanna have a look at that thing you can come after school."
 - ii) "See me in the oval near cricket nets come alone."
 - iii) "Oki but I cant see you unless you got some work to do with me."
 - iv) "I got a yard duty near canteen tomorrow."
- g) On or about 9 February 2009, you sent the following text messages to student 1:
- i) "Oye do you want that bracelet or not? Coz if not i can give it to someone else. But i wanna to give it to you coz i brought it for you."
 - ii) "^^E^@^Ch^B^A Thats fine then. I will give it to someone near V day. But i told you before its beautiful. Why you sacred if somebody asks just say you buy it from shop."
 - iii) "^^E^@^Ch^B^B and its not real diamonds."
 - iv) "If you wanna have a look stay back in linxclass or you working tonight?"
- h) On or about 10 February 2009, you sent the following text messages to student 1:
- i) "From now onwards you will be taken care in arts. And sorry if sounded rude to you in morning."
 - ii) "She will take extra care with yr 11 students. That's all."

- iii) "You know wat name I stored youR mobile no in my phone guess it and I will do anything for you."
 - iv) "Pretty girl with pretty eyes. Ha ha. I also got a surgery coming up in faster. Wats wrong with you?"
 - v) "Wat the hell, did you just told me about your periods. Oh god... I don't know wats between me and you, but there is something, do you know wat it is?"
 - vi) "^^E^@^Ci^B^Al m also still figuring it out. You in my dreams some times, i kept thinking about you in holidays, mom and friends always asks me why you always talk ab."
 - vii) "^^E^@^Ci^B^Bout only one student. And i don't know why i came back. Must be something."
- i) On or about 11 February 2009, you sent the following text message to student 1 after seeing student 1 whilst she was working at the supermarket
- i) "You look tired or were you sad?"

THE EVIDENCE

The Principal

The principal gave evidence under affirmation and confirmed his statement as true and accurate. The Panel heard that the principal is an experienced teacher who moved to the town in 1987. He has held various teaching and administrative roles during 23 years at the school. He was principal of the school at the time of the allegations and is currently a classroom teacher at the school.

The principal told the Panel that on 12 February 2009 the later years co-ordinator teacher 1 and the acting assistant principal came to see him with a hand written letter of complaint from student 1. Student 1's letter covered a range of allegations about inappropriate communication from the teacher to her in a letter he gave her and also through text messages to her. The principal said that he was concerned about the nature of some of the comments relating to student 1. Comments such as "You have the most beautiful eyes" and "The only reason I am coming back from overseas is for you."

The Panel heard that the teacher bought student 1 a bracelet and sent other text messages to her such as "There is something between us do you know what it is?" and "I dream about you. I thought about you all holidays. My family asked why I only speak about one student. I brought you a bracelet. There must be something".

The Panel was told that student 1's letter also complained about the teacher commenting that her boyfriend was not good enough for her and that the school must hate him because they were both in his class. The principal stated that student 1's letter conveyed a sense of threat in that the teacher had said of the text messaging, "If you tell anyone about this I have sources and you will be in big trouble". Student 1's letter stated that the teacher told her to delete his messages and that in his phone her number was registered as "pretty girl with pretty eyes". The Panel heard that student 1's letter also suggested that the teacher was trying to manoeuvre her to a position where she was by herself by arranging via a text for her to stay after class.

The principal told the Panel that when interviewing student 1 regarding her letter he discovered that there was a remaining text message from the teacher on her phone saying, "You looked sad today, or are you tired?" The Panel heard that the principal also interviewed student 1's sister, who said that she felt uneasy about the phone contact the teacher was having with student 1 and encouraged her to talk to teachers.

The Panel was told that on February 12 the principal spoke to the teacher and handed him a letter seeking an explanation by February 17 concerning the allegations raised in student 1's letter. He said that the teacher responded with shock and stated his innocence in regards to the allegations. The principal said that the teacher's written response arrived prior to 17 February stating that he had done nothing wrong and was trying to support student 1 with her emotional issues. The teacher denied most of the text messages and said most were in the context of offering support. He indicated that the bracelet was a prize for good work in mathematics and that he gave other students prizes. The principal said that in the teacher's response, he stated that he believed that student 1 had a crush on him. The teacher acknowledged that he had asked student 1 to delete his text messages as he did not want to get into trouble. He also acknowledged that he gave student 1 his personal email address.

On 19 February the principal interviewed the teacher where he said that many of the allegations were denied or explained away by the teacher. The principal stated that the teacher told him that he had not been through the school's Induction Program however the principal told the Panel that he assumed that the teacher was aware of the VIT Code of Conduct which made the area of teacher-student relationships clear. The principal said that at interview the teacher stated that he had taken photographs of all his class members but that student 1 was away on the day and she later requested that he take a photo of her. The teacher acknowledged that he obtained student 1's phone number from a third person and that it was not appropriate for a teacher to have a student's phone number. He said that he had given student 1 his phone number but that he later asked her to delete it. The principal said that although the teacher denied storing student 1's name in his phone as "beautiful girl, beautiful eyes" transcripts from his telephone provider confirm that he either did store, or intended to store her name in this way. The teacher told the principal that he felt that he had sent about 15 text messages to student 1. The principal told the Panel that phone transcripts show 43 messages were sent between 1 January 2009 and 11 February 2009.

The principal told the Panel that he interviewed several students who confirmed that the teacher gave them gifts as incentives for good work.

The Panel heard from the principal that on 5 March 2009 the teacher emailed him stating that as a result of the allegations he was feeling stressed and requested an early suspension. The principal said that on approximately 17 April 2009 he commenced a formal investigation into the allegations. The Panel was told that on 20 August 2009 the teacher tendered his resignation to the regional director who responded with written acceptance to the teacher on 26 August 2009.

The Acting Assistant Principal

The acting assistant principal gave evidence under affirmation and confirmed her written statement as true and accurate. She said that she has been teaching since 1987 and was acting assistant principal at the school in 2009 and is presently assistant principal. She said that between 2007 and 2009 she was leading teacher in charge of staff professional development.

The Panel heard that along with another teacher she designed and conducted the Induction Program for new teachers each year. The program is held prior to school starting but the teacher did not attend the Program. She said that teacher 2, the teacher's mentor, took him through the program at a later date.

The acting assistant principal stated that at the beginning of 2009 teacher 1, later years co-ordinator came to her with information that student 1 and her sister had spoken to her about inappropriate texts from the teacher to student 1. She said that she and teacher 1 then discussed the matter with the principal.

Teacher 1

Teacher 1 gave evidence under affirmation and confirmed her written statement as true and accurate. She told the Panel that from September 2007 until July 2010 she was later years leader at the school. She is currently acting assistant principal.

The Panel heard that early in February 2009 student 1 and her sister told teacher 1 that the teacher was texting student 1, offering her gifts and making derogatory statements about her boyfriend. Teacher 1 said that it was a matter for the principal and asked student 1 to write down all the things that were making her uncomfortable. They then met with the principal and the acting assistant principal and discussed student 1's letter and the issues involved.

Teacher 1 told the Panel that 8-10 days prior to this the teacher had approached her to say that he was concerned about the welfare of a couple of students including student 1. Teacher 1 said that she advised him to monitor the situation.

Teacher 2

Teacher 2 gave evidence under oath and confirmed her written statement as true and accurate. She told the Panel that she has been a teacher at the school for 16 years and that in 2008 and 2009 she was the teacher's mentor.

The Panel heard that teacher 2 assisted the teacher with day to day operations in relation to such matters as discipline policy, managing students, and extras. In the second half of 2008 the teacher mentioned that he had purchased a ticket to a major event to give to a student as a prize. Teacher 2 stated that she explained to the teacher that that seemed like a lot of money to spend compared to a chocolate frog.

Teacher 2 said that the teacher missed the Induction Program at the beginning of the year but that she went through it with him at a later date. She could not recall what areas were covered including whether or not teacher – student relationships were included.

Student 2

Student 2 gave evidence under oath and confirmed that her written statement was true and accurate. Student 2 told the Panel that she is currently studying science at Monash University and that in 2010 she was a Year 12 student at the school

She told the Panel that she has known student 1 since Year 7 and they have been friends since Year 9. Student 2 said that student 1 would make comments about the teacher such as “he’s hot”. She said they weren’t in a serious way but so that the teacher could hear them.

The Panel heard that after mid-year exams the teacher took the class for fish and chips. On their return to school student 1 was upset and the teacher said “The problem is always boyfriends and girlfriends, just get rid of the problem if it is upsetting you”. Student 2 told the Panel that the teacher had close friends with several students and that he had exchanged phone numbers with them.

Student 2 stated that at the end of 2008 student 1 wrote a letter of thanks to the teacher and after that he asked her to come and see him. He gave her a letter with words to the effect “I hate to see you cry because you have such beautiful eyes”. She said that he did not let her keep the letter. The Panel heard that at the end of 2008 the teacher phoned student 1 on her mobile when student 2 was present. He asked student 1 to go to the school to get her report and to get a copy of the photo he had taken.

Student 2 told the Panel that student 1 was “freaked out” by the contact and communication from the teacher.

Witness 1

Witness 1 gave her evidence by telephone and under affirmation. She confirmed her statement as true and accurate with one minor alteration. She told the Panel that she was a fulltime student at Technical and Further Education (TAFE).

Witness 1 stated that she was worried for student 1 as she had been quiet for a few days and seemed a bit down. She said she kept asking her what was wrong but with no response until eventually student 1 broke down, burst into tears and told witness 1 about the text messages and personal comments from the teacher.

DISCUSSION OF THE EVIDENCE

The Panel was mindful at all times of the application of the rules of natural justice given that the teacher was not present or represented. The Panel was satisfied that the teacher was given every opportunity to address and contest the allegations firstly through the investigation stage, which he chose not to participate in and secondly through the formal hearing.

In response to the notice of investigation dated 15 April 2010, the teacher emailed the investigator on 21 May 2010 accepting all of the allegations. His email contained

admissions to the allegations and reasoned they were due to a lack of training, not attending the college's Induction program and to a different culture from where he grew up. He apologised to student 1 and to the staff at the college for letting them down. The teacher indicated that he had learnt that what he did was wrong and not accepted in the teaching profession.

Notwithstanding the teacher's email response, the Panel noted that by not attending the hearing the teacher failed to take the opportunity to demonstrate to the Panel through sworn evidence, any professional and personal insights gained or to detail any remorse felt or to offer an apology to the student, teachers and school community for his actions. The Panel was faced with the problem of not being able to test or assess any professional or personal reflections or understandings that the teacher may have had at the time of the hearing. The Panel has grave doubts as to how substantial and sustained the teacher's insight is into his behaviour. Indeed the Panel is of the mind that the teacher has demonstrated very little understanding of what constitutes a professional relationship between a teacher and a student or any understanding around the issues of power and trust that the public invests in teachers.

The facts in this case are not in issue. Evidence presented to the Panel clearly demonstrates that the teacher conducted an inappropriate and unprofessional relationship with student 1. The Panel was of the view that the teacher fully understood the gravity of his actions evidenced by his requesting student 1 to either delete or return information that may incriminate him. He was persistent in his inappropriate communications with her and escalated the misconduct by purchasing gifts for her. The Panel discussed the concept of grooming of a student. Although there were elements to support this view such as the teacher suggesting that he was only returning from overseas to be with her, the Panel was not convinced that the teacher was involved in this way.

Evidence was presented that questioned the extent and effectiveness of the teacher's participation in the College's Induction Program. The Panel is confident that the teacher participated in a significant proportion of this program. In any case as a registered teacher he should have either been aware of, or received a copy of the profession's Code of Conduct which clearly sets out the professional standards required of a teacher.

FINDINGS

The Panel considered whether the teacher's behaviour amounted to serious misconduct and/or was unfit to teach. Serious misconduct includes "conduct which would reasonably be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency" (*Allinson v General Medical Council* (1891-4) All ER 768). In (*Parr and Nurses Board of Victoria* (1998) 16 VAR 118) serious misconduct is misconduct that involves a substantial departure from the professional standards which might reasonably be expected of a registered nurse.

The Panel found that the teacher not only breached the professional standards of the teaching profession, he abused the privileged position of power and trust that a teacher is granted.

His behaviour was a serious departure from the accepted standards of the teaching profession. The public needs to be protected from this type of behaviour which brings disgrace upon the teaching profession.

The Panel found that based on the documentary evidence presented to it and on the balance of probabilities all allegations were substantiated and evidenced serious misconduct on the part of the teacher.

In considering the teacher's fitness to teach, the Panel reflected on the words of Justice Harbison, Vice President and Mr Eccles, Member at [169] when addressing issues in relation to *Davidson v Victorian Institute of Teaching* [2007] VCAT 920. The Panel noted:

"We take the view that a finding that a teacher is unfit to teach must carry with it a perception that the conduct complained of is of a continuing and persistent nature. It is conduct which throws doubt on how he would conduct himself in the future in the classroom. A teacher may commit a single act of serious misconduct, or a series of such acts, but those acts may be explicable in context and unlikely to recur. A determination that a teacher is unfit to teach appears to us to be a more severe penalty. It carries with it an assessment that that person should not be in a position of authority and trust with children, because his whole approach to teaching and to the children in his care is profoundly and irretrievably flawed. It would often involve consideration of criminal conduct."

A key element in determining the fitness of a teacher who has breached such trust is the degree and sincerity of the remorse shown regarding that breach, the degree of insight into the consequences of such a breach, the circumstances which contributed to its occurrence and possible remedies to ensure that such a breach does not occur again.

In reflecting on this judgement the Panel notes the absence from the teacher of any significant or compelling evidence of remorse, explanation for his conduct, or any action to address the conduct. In view of the absence of any of these factors that may have provided the Panel with some mitigating circumstances, the Panel finds the teacher unfit to teach.

DETERMINATION

On 8 April 2011 it was determined that the teacher had engaged in serious misconduct and is not fit to teach. The registration of the teacher is cancelled.

Jane O'Shannessy

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Jane O'Shannessy, CHAIRPERSON

Jane O'Shannessy

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**per:
Marilyn Mooney, REGISTERED TEACHER**

Jane O'Shannessy

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**per
Kevin Pope, REGISTERED TEACHER**