

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 108

REGISTERED TEACHER: Oliver Graeme STANLEY

PANEL MEMBERS: Kevin Moloney, Chairperson
Marilyn Mooney, Registered Teacher
Penny Webster, Specialist Member

ATTENDANCE: The teacher attended the hearing and was not represented
Anne Sheehan Counsel Assisting with Ms C Sherman,
instructing on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 14 February 2011

DATE OF DECISION 14 February 2011

FINDING AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006* (the Act) the Panel finds that the teacher was guilty of serious misconduct and was not fit to teach.

The Panel decided not to impose a determination because the teacher is not registered.

REASONS

BACKGROUND

The teacher was a provisionally registered teacher with the Victorian Institute of Teaching (the Institute) from 7 November 2008.

By letter dated 14 July 2009 the employer notified the Institute that they had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 16 December 2009 and the Committee decided to refer the matter to an investigation.

The teacher's provisional registration with the Institute lapsed on 7 November 2010.

On 8 December 2010 the Disciplinary Proceedings Committee (the Committee) decided to continue with the inquiry.

On 8 December 2010 the Committee also considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 6 January 2011 was served upon the teacher by registered post on 13 January 2011.

At the commencement of the formal hearing Counsel Assisting submitted that allegations 2.1(d) and 3(b) be withdrawn. The Panel consented to the submission.

THE ALLEGATIONS

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

Whilst employed as a provisionally registered teacher at the school:

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

Further or alternatively:

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

1. The teacher failed to treat his colleagues with courtesy and respect including by using inappropriate language, making inappropriate verbal threats against, and

further verbally and physically assaulting teacher 2 and teacher 1 as follows:

- 1.1 On 16 June 2009, and during period 6, in a corridor of the school, while discussing his daughter the student (a student of the school):
 - a. When teacher 1 and teacher 2 raised their concerns about the student's behaviour:
 - i. Became agitated and loudly swore at them.
 - ii. Said to teacher 1 words to the effect of "how can you have one fucking rule for one and different fucking rules for others?"
 - iii. Said to teacher 1 words to the effect of "this is bullshit, students tell me to fuck off all the time" and "why are there different rules for the student?"
 - b. Following teacher 2's request that they talk about the matter another time, the teacher proceeded to leave the area, then rushed back towards teacher 1, continuing to swear and yell words to the effect of:
 - i. "Leave my daughter alone."
 - ii. "Stop picking on my little girl."
 - iii. "Leave my fucking daughter alone or I'll fucking kill you."
 - c. Continued to advance towards teacher 1 and teacher 2, causing teacher 2 to physically place herself between the teacher and teacher 1.
 - d. Ignored teacher 1's requests that he calm down and leave.
 - e. Ignored teacher 2 stating loudly to him "that's enough."
 - f. Continued to approach teacher 1, causing teacher 2 to be pushed against teacher 1.
 - g. Punched teacher 1 in the right cheek with a left clenched fist.
 - h. As his fist came off teacher 1's cheek, it then made contact with the right side of teacher 2's head.
 - i. Followed teacher 2 and teacher 1 as they entered teacher 3's L4 classroom.
 - j. As teacher 1 attempted to close the L4 classroom door, pushed against the door and/or placed his arm in the way of the door causing teacher 2 to call out to for assistance.
 - k. Tried to reach and/or take hold of teacher 1 who was on the other side of the L4 classroom door, while continuing to shout at teacher 2 and teacher 1 including with the words "leave my daughter alone."

The Principal

The Principal affirmed her witness statement as true and correct under oath. She confirmed that the teacher was a former student of the school and that the family had a long association with the school. The Panel heard that there were processes and protocols in place for dealing with difficult students but that these were mostly handled by the year level coordinator and that, as principal, she could not comment directly on how closely these were followed in relation to the events of 16 June 2009 and the manner in which the teacher was approached by the year level coordinator. With the benefit of hindsight about how events unfolded, it was acknowledged that the School's communication with the teacher about his daughter could have been handled better. The principal stressed the limited amount of time available to staff undertaking year level coordinating and pastoral care roles at the school. When asked about the effects on the school community, the Panel heard that the welfare of staff was a concern and this took considerable time to heal. The Panel also heard that the principal was not aware of any long term effects on students.

Teacher 1

Teacher 1 received a summons to appear. Teacher 1 affirmed his witness statement as true and correct under oath. Teacher 1 was the Assistant Year 9 coordinator at the time the events took place. The teacher's daughter, the student, was in Year 9 at the time. The Panel heard that the student had had some difficulties at the school previously. On a prior occasion teacher 1 had organised a formal meeting with the assistant principal, teacher 1, the teacher and his daughter where the school's concerns about the student had been raised. The teacher had been advised in advance of the issues to be raised. That meeting had been very successful and the teacher had required the student to apologise for her behaviour. There had also been a period of suspension earlier in the year. The Panel also heard that teacher 1 thought that the student's behaviour had improved.

On 16 June 2009 it had been reported to him that the student had sworn at a teacher, refused to follow directions and had left class without permission. The teacher was employed at the school as a casual relief teacher on 16 June 2009.

The Panel heard that teacher 2 and teacher 1 were discussing the student's behaviour in the corridor when the teacher passed by. Teacher 1 asked the teacher if he would mind having a chat about the student. Teacher 1 stated that the discussion began with some general comments about the student and then progressed quickly to the complaints that he had received that day. The Panel heard that teacher 1 was surprised at how quickly matters escalated and at the teacher's reaction to those complaints. The Panel heard that teacher 1 was shaken and did not choose to continue in the role of assistant coordinator the following year. Under questioning from the Panel teacher 1 said he had previously conducted disciplinary discussions with other teachers who had children at the school on an informal basis but acknowledged, with the benefit of hindsight, that on this occasion it would have been difficult and unfair for the teacher and that he would now handle matters differently and more formally.

The teacher cross examined teacher 1 and put it to teacher 1 that his first words in the conversation in the corridor were that the student was to be suspended. Teacher 1 denied this. The teacher asked teacher 1 if he felt it was appropriate that a colleague who was a

casual relief teacher be approached in this manner. Teacher 1 acknowledged that, in hindsight, this was inappropriate and may have contributed to the teacher's reaction. Teacher 1 acknowledged the markedly different reactions of the teacher, between the pre-planned disciplinary meeting in a private space and the 'spur of the moment' disciplinary discussion in a public forum. Teacher 1 acknowledged that the student was in the adjoining classroom at the time of the unplanned disciplinary discussion.

The Panel enquired of teacher 1 if he acknowledged that to approach to the teacher in the corridor was unfair. Teacher 1 acknowledged that it was. The Panel also enquired as to whether the services of the School Counsellor had been employed in their dealings with the student. The Panel heard that while he could not recall any specific involvement at his level, the assistant Principal and teacher 2 would have such records. The Panel enquired if teacher 1 was aware of the student's difficulties in early childhood and of her recent medical treatment for the removal of a birthmark on her face. Teacher 1 replied that he had some but limited knowledge.

Teacher 2

Teacher 2 gave evidence via telephone under oath. Teacher 2 affirmed her witness statement as true and correct. Teacher 2 was the Year 9 Coordinator at the time the events took place. When asked about how she and teacher 1 approached the teacher about the student's behaviour, the Panel heard that the teacher was asked if he "had a minute" and that he seemed fine with that. The Panel heard that teacher 2 observed that the teacher was becoming agitated as the discussion progressed. After briefly going to check on her class, teacher 2 had observed the teacher become more aggressive and that his behaviour had escalated, that she was unable to assist in diffusing the situation and that she and teacher 1 had to retreat during and after being struck. The Panel heard that students in nearby classrooms were able to see what was going on.

The teacher cross examined teacher 2 and enquired if she thought the manner and timing of the approach in the corridor were appropriate and the Panel heard that teacher 2 considered that the teacher had an opportunity to not continue the discussion. When asked if this was the normal protocol for approaching parents, the Panel heard that teacher 2 indicated that it had happened informally before.

The Panel enquired of teacher 2 if she would have handled the situation differently in hindsight and teacher 2 acknowledged that she would have. The Panel also enquired about this particular situation where the parent is also a teacher and teacher 2 indicated that at the time she felt it was the right thing to do, informal as it was. The Panel highlighted the seriousness of proposing a suspension and asked teacher 2 if she still thought it appropriate to be handled in the corridor and she thought that it was. The Panel enquired of teacher 2 as to the effect that the situation had on her. The Panel heard that she was upset and now she is more careful about communicating with parents on her own.

Teacher 3

Teacher 3 gave evidence via telephone under oath. Teacher 3 affirmed his witness statement as true and correct. The Panel heard that teacher 3 was teaching in a room adjoining the corridor, heard the commotion and someone call for him to summon help.

The Panel also heard that teacher 3 observed teacher 1 and teacher 2 pushing back against the door to escape the teacher and that students from his class were out of their seats. The Panel heard that the students had to be de-briefed as some were stunned, that the situation was hard for them to comprehend what had happened and that they needed to be reassured that everything would be dealt with.

Teacher 4

Teacher 4 gave evidence via telephone under oath. Teacher 4 affirmed her witness statement as true and correct. The Panel heard that teacher 4 was teaching in a room adjoining the corridor and after hearing the commotion observed from her classroom the teacher pacing in the corridor and yelling out. The Panel also heard that teacher 4 opened her door and encouraged the teacher to leave the scene and that she observed the teacher's daughter, the student, in the corridor in tears. In addition the Panel heard that students in teacher 4's class had to be calmed down.

The Teacher

The teacher chose to give evidence under oath. The Panel heard the teacher acknowledge that he reacted badly to being approached in the corridor, was remorseful and apologetic, that he had reacted foolishly and irresponsibly and that these were not the actions of a teacher. The Panel also heard that the teacher had received some counselling to assist him in gaining insights into his behaviour and that the events had forced him to reflect on his relationship with his daughter and her upbringing. The teacher acknowledged that his daughter was difficult to handle and the Panel were informed of the challenges in her life and his own battle with depression. The teacher made it clear to the Panel, though, that there were no excuses for his behaviour.

Counsel Assisting then cross examined the teacher. The Panel heard that the teacher has held a series of short term and contract positions along with casual relief work. When the teacher was asked whether he was able to develop a mentor relationship with any teachers he had worked with there was no evidence presented of any enduring contact with any teacher in particular. The hearing was adjourned to consider written references that the teacher had tabled. When Counsel Assisting asked if any of the referees knew about these disciplinary proceedings, the Panel heard that that the teacher had not informed them. When the teacher was questioned as to the effect of the physical assault on teacher 1 and teacher 2, the Panel heard the teacher acknowledge that it would have been horrible, that he was embarrassed and that he genuinely wanted to apologise to them. The teacher was asked to give some specific examples of how the counselling had given him any insights into anger management and the Panel heard general statements about strategies that the teacher would use but little by way of specific indicators of improvement that could be readily identified.

Focussing on the incident on 16 June 2009, Counsel Assisting put to the teacher that his recollection of events could be distorted by the stresses he was experiencing at the time. The Panel heard the teacher admit that he could not precisely remember how events unfolded. However, under questioning from the Panel, the teacher acknowledged that when he agreed to have a chat about his daughter in the corridor, he was anticipating a positive discussion as he had been invited by teacher 2 that day to come and inspect the student's work.

The Panel enquired as to the extent of ongoing counselling and whether strategies to deal with stress were covered as well as discussions around boundaries between the role of a parent and that of a teacher. The Panel heard the teacher was taken through strategies for keeping calm and for making better choices but that there was no evidence presented to demonstrate that these strategies had been employed and tested by the teacher. When questioned by the Panel about how he would now cope in the classroom, with parents and with other staff, the Panel heard the teacher assert that he would be a better listener and a better learner. The Chairperson asked the teacher if he wanted to teach given that he allowed his provisional registration to lapse. The teacher answered in the affirmative.

DISCUSSION OF THE EVIDENCE

The facts surrounding the events of 16 June 2009 are not at issue. The Panel was reminded that the teacher has already been found guilty of the offence as listed under Allegation 3 and has already been punished. Consequently, these proceedings were not about punishment but about the teaching profession and the protection of the public. There were two issues for consideration: the assaulting of a colleague in a school setting and the effect on the students who observed or heard about the assault. Whilst the offences are not in dispute the task of these proceedings was to understand the context of the offences and to determine whether the teacher is fit to teach. The Panel also considered whether the teacher showed remorse and insight in relation to his conduct and future behaviour.

The Panel found the evidence of teacher 1 and teacher 2 about the order in which comments were made during the discussion to be consistent and to be preferred over that of the teacher. The Panel is not inferring that the teacher had been untruthful, rather it concurs with the suggestion of Counsel Assisting that the teacher's recollection of events under stress may have been clouded.

The Panel acknowledges that the unplanned approach to the teacher by teacher 1 and teacher 2 about his daughter in the public corridor may have contributed to the reaction displayed by the teacher by catching him off guard. The Panel notes that the School has protocols for communicating with parents of children where there are behavioural difficulties and that these were not followed in this instance. The Panel also notes that it was not uncommon at this School for teachers who had their own children attending the school to have informal unplanned discussions about their children. The Panel acknowledges the blurring of boundaries between the teacher's role as parent and that of a teacher may have led to the decision by teacher 1 and teacher 2 to approach the matter of his daughter's behaviour informally. The Panel viewed sympathetically the fact that the teacher has undertaken counselling to gain insights into his behaviour and his personal situation. The Panel is also cognisant of the teacher's unreserved remorse and acute embarrassment.

That said, the Panel finds that the teacher's threat towards and assault of colleagues in full view of students to be a gross departure from the behaviour expected of a teacher and that such behaviour is offensive to members of the profession and the public.

FINDINGS

The Panel finds that all of the allegations as listed in the notice of hearing, except 2.1 (d) and 3(b) which were withdrawn, are substantiated. Irrespective of the context the Panel finds the teacher guilty of serious misconduct.

On the question of whether the teacher is fit to teach the Panel has taken into account the teacher's clear demonstration of remorse, his unreserved apology for the way in which he has behaved and his willingness to seek counselling to assist in dealing with anger management issues and with the development of appropriate strategies. The Panel believe that there is still work to do before it could be satisfied that the teacher could be deemed fit to teach.

DETERMINATION

The Panel considered that in this matter it would not be appropriate to cancel or suspend the teacher's registration. Although the teacher's conduct amounted to serious misconduct the Panel took into account the circumstances surrounding the conduct, the remorse shown by him and the acknowledgement that he needed treatment to control his anger. If the teacher had been registered the Panel would have been inclined to place conditions on his registration. These conditions would ensure that the teacher sought and received treatment from a psychologist and developed an understanding of his responsibilities as a teacher.

The teacher is no longer registered. He was registered at the time of the events in question and under section 2.6.47 of the Act the Institute decided on 8 December 2010 to continue to conduct this inquiry including the formal hearing as if the teacher were still a registered teacher.

The Panel's jurisdiction in a matter such as this extends to the Panel having the ability to make findings in relation to the teacher's conduct and to impose a determination where appropriate. However the jurisdiction does not extend beyond this point. That is, the Panel cannot make a determination that imposes conditions on a teacher's registration because that person is no longer a registered teacher. In this matter the Panel was unable to place conditions on the teacher's registration.

However as noted above, the Panel believes that the teacher would benefit from treatment from a psychologist experienced in working with the teaching profession and who has knowledge of the professional standards of teachers. The counselling sessions should address the following issues:

- How the teacher's conduct has harmed colleagues and students and how it has breached the Victorian Code of Ethics and Code of Conduct
- What strategies the teacher could implement to ensure that he does not repeat the conduct

- The effect of the teacher's conduct on colleagues and students
- How to recognise personal stressors and the development of strategies to respond to stressful situations
- An understanding of the importance of professional behaviour in maintaining the reputation of the profession and the trust that the community is entitled to expect of teachers

It recommends that the teacher consider seeking such treatment before reapplying to be registered as a teacher in Victoria

Kevin Moloney

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Kevin Moloney, CHAIRPERSON

Kevin Moloney

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per:
Marilyn Mooney, REGISTERED TEACHER

Kevin Moloney

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per:
Penny Webster, PANEL MEMBER