

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 128

REGISTERED TEACHER: Abbey Megan BRYANT

PANEL MEMBERS: Garry Salisbury, Chairperson
Heather Schnagl, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: The teacher attended the Formal Hearing and was represented by Mr Brian Bourke

Mr Chris Enright, Counsel Assisting with Ms Jen Sheehan, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATE OF HEARING: 3 October 2012

DATE OF DECISION: 3 October 2012

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 3 October 2012 the Panel found the teacher was guilty of serious misconduct and fit to teach. The Panel reprimanded the teacher.

The Panel determined that the teacher remains registered as a teacher in Victoria.

REASONS

BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 9 April 2010.

By telephone on 6 March 2012 and follow up correspondence dated 30 March 2012, the principal of the school notified the Institute that it had taken action in relation to the alleged serious misconduct and/or lack of fitness to teach of the teacher. The teacher was stood aside while the principal collected information regarding these allegations.

The teacher resigned from her employment with the school, effective from 16 March 2012.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 23 May 2012 and the Committee decided to conduct an investigation.

Following the investigation, the matter was referred back to the Committee and on 22 August 2012, the Committee decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 4 September 2012 was served upon the teacher by registered post on 10 September 2012.

THE ALLEGATIONS

The information the Institute has received as evidence of possible lack of fitness to teach is that whilst registered as a teacher in Victoria:

- On or about 12 December 2011, the teacher had inappropriate physical contact with the student, a year 12 male student:
 - at the 2011 year 12 graduating ceremony; and
 - at nightclub A and nightclub B in town A.

THE EVIDENCE

Counsel assisting the Panel submitted an outline of the circumstances surrounding the allegations that the teacher had inappropriate physical contact with the student, a year 12 student both at the graduating ceremony and at nightclub A and nightclub B. After an investigation the principal of the school stood the teacher down on 13 March 2012 and the teacher resigned on 16 March 2012. Counsel submitted that it was to the teacher's credit that she was cooperative in an interview with the Institute in which she admitted the truth of the allegations. Counsel submitted that the purpose of the Panel hearing was not to punish the teacher but rather to protect the standing of the teaching profession, to protect the reputation of the teaching profession and to protect students. He submitted

that the Panel's first task was to decide whether the allegations were substantiated and whether they amounted to misconduct or serious misconduct. Depending on that decision the Panel had the power to impose conditions or in the case of misconduct to impose a caution or reprimand amongst other penalties. Counsel pointed out that the principles enshrined in the Institute's Code of Ethics and Code of Conduct specifically outlined the importance of teachers treating their students with courtesy and dignity (Principle 1.2), to maintain objectivity in the relationships with students (Principle 1.4) and that teachers are always in a professional relationship with their students whether at school or not (Principle 1.5). Counsel also outlined the definition of fitness to teach which had to be followed in this case.

Counsel representing the teacher queried the age of the year 12 student, his physical size and whether he had completed year 12. He stated that the serving of alcohol at the function was problematic. The male student had not been taught by the teacher and she had had nothing to do with him at school or any other connection. There was no evidence that the boy was distressed or upset and no statement had been provided by him. Counsel submitted that it appeared that the student had been drinking as had the teacher. The student had not resisted the teacher. He said exactly what took place in terms of touching on the shoulder and arms in front of the guests remained unclear. He agreed that the teacher had spoken to the boy's mother at the school function but again she did not know him and she was affected by alcohol. She had also admitted in a phone interview that she had kissed the boy. Counsel submitted that the events took place over two or three hours but there was no suggestion that she went home with the boy. Counsel submitted that *Davidson v Victorian Institute of Teaching* (2007) VCAT 920 (169-170) was based on facts in a case where over a period of months a teacher had committed very serious misconduct whereas this was a one-off event.

Counsel submitted that the teacher did not leave the nightclub with the boy and her behaviour needed to be looked at in its proper circumstances. She did not kiss the boy at the official school function and the kissing event occurred over a very brief period of time. He indicated that the teacher did not resile from the fact that she denied the allegations to the principal but eventually confessed. She had resigned from the school and had not taught in 2012. Counsel urged the Panel to consider the future of the teacher and that each case needed to be looked at on its merits. He submitted that it defied logic to know exactly what happened. He said that rather than the Panel applying the standard of proof from *Briginshaw v Briginshaw* (1938) HCA 34; (1938) 60 CLR 336 (30 June 1938) that an allegation must be proved to the reasonable satisfaction of the Panel it was more appropriate to look at the circumstances underlying the alleged offence.

He said the teacher's behaviour was an act of misconduct not serious misconduct and committed under the influence of alcohol. He stated that it was to her credit that she had given up alcohol and she desperately wanted an opportunity to be a teacher again. Counsel submitted that teacher 1, teacher 2 and teacher 3, all teachers at the school had written in support of the teacher. He also referred the Panel to the teacher's most recent statement (Exhibit H) to indicate her current state of mind and the supportive reference from her psychiatrist (Exhibit I).

Counsel assisting the Panel submitted that the teacher had been candid in her discussions with him and understood that her actions amounted to serious misconduct. He said there was clear and cogent evidence for the Panel to find that the teacher was guilty of serious misconduct. He said the purpose of the Panel was to protect the public and this was a case where there had been an uneven power relationship between the student and the teacher. Counsel for the teacher submitted that a conviction for this conduct would prejudice the teacher's future employment.

The teacher

The teacher stated that she was currently living interstate and teaching dance at a dance studio. She had learnt dance since she was five years old. She had a Bachelor of Education at Charles Sturt University over four years and specialised in K-12 and Middle Schooling. She had initially taught at school 1 but had then been contacted by the principal of the school, asking her to attend an interview for a position there. This was also the school she had attended as a student in years 7-12 and where she had also been the school Vice-Captain in Year 12. She said that she would like to go back and teach in a primary school because this was where her passion lay.

The teacher stated that she had resigned herself to punishing herself and to resolve the wrongs she had done. On the night in question she had had far too many glasses of wine. She said that she had consumed somewhere between six and eight glasses of wine at the graduation ceremony. She felt this was because she had experienced a lot of stress because of her teaching load which included a language, a subject for which she had received no training. Initially she was not going to attend the function but she was encouraged to do so by her family who thought she should. The teacher said she was very remorseful and had paid the price for each glass of wine she consumed. She said that she showed poor judgement in consuming alcohol to excess and her judgement further deteriorated during the night. She said that she rarely consumed alcohol now.

The teacher said that she had only a vague knowledge of the student but had taught his younger sister at dance classes. She had no recollection of talking to the student's mother at the graduation ceremony and no memory of having physical contact with him at the ceremony. At the end of that function she went in a carload of people she did not know to town A to meet up with her friend. She said that she drank vodka and soda and then went to nightclub B in town A where she danced with her friend and drank two more drinks. The student and his friends were at an adjacent table and the people on the table began interacting. The teacher said she had no drinks with the student but she did dance with him over approximately half an hour. She remembers kissing him for a significant period of time. After that she left the nightclub with her friend. The next morning she sent the student a Facebook message indicating she had made a big mistake and asking him not to say anything. She had not seen him since.

The teacher said her sibling was a teacher and she had wanted to be a teacher since she was five years old. She was the eldest of five children and had taught dance since she was thirteen years old. She did not deny the events and saw them as a huge mistake on her part but wanted the chance to teach again. She indicated that there was no chance that an event like this could happen again and she rarely drinks now. She said her career

meant more to her now. She said the experience had made her grow up and living independently interstate had made her learn to make decisions on her own.

Counsel assisting the Panel submitted that the teacher had acknowledged in her interview (Exhibit H) that her actions amounted to serious misconduct and that student/teacher physical contact was inappropriate. Whether the student consented mattered very little because the acts occurred in a context where there was a serious imbalance of power between the student and the teacher and the responsibility was the teacher's. The student's consent was not relevant because he had been placed in an invidious position. Drinking too much at a school function is inappropriate because professional behaviour is still expected and the teacher agreed that being drunk was not appropriate. The teacher said that she had learnt her lesson and her memory of the evening is hazy and she may well have danced with the student at the graduation ceremony. The teacher said she had made no arrangement to meet the student at the ceremony, or to get into the car together or to meet at the nightclub. At nightclub B she reiterated that the student and his friends were sitting behind them, that they danced together and she kissed him. When asked when she had formed the view that her behaviour was so serious she could lose her job she said it was the next day and that she realised it was not the right thing to do to ask the student to remain silent but she was scared and disgusted with herself for what she had done. She stated that she felt this way because what she had done was completely inappropriate.

The teacher said it was wrong to ask the student not to tell because students shouldn't have to protect teachers. She said that she expected that he would tell the truth if asked. When asked if she thought the unequal power relationship between the student and herself would influence him she thought it would lead to him not telling the truth. The teacher said she knew it was wrong to deny the allegations when the principal put them to her. The teacher said she had read the Code of Conduct and the Code of Ethics and that lying to a principal is not in accordance with the Codes and not the behaviour expected of a teacher. When asked how she would deal with these matters if her behaviour became known at another school, the teacher said she would be honest with her colleagues. If students asked her about the matter she would seek assistance from a leadership person about how to deal with it.

The teacher said her psychologist had counselled her effectively and helped her develop better ways of dealing with stress. She recognised that this was a problem for her and probably why she had drunk so much. One of the strategies provided by her psychologist, if she was feeling unhappy, was to draw her feelings and what caused them and what was the best way of dealing with them. She said that she had not been very good in dealing with her emotions and this was one way her psychologist had taught her to do so. She felt that rather than controlling her emotions she was able to manage them better. She said that she was now seeing a psychologist more frequently and that if she returned to a school she would seek to have a proper mentor. The teacher said one of her stressors was the teaching of a language where she had received limited help. She had asked another language teacher for help which had then been provided, rather than offered. She also received assistance in the teaching of drama. In the dance area she wrote the entire dance curriculum in her own time.

The teacher said she now had better support networks including her family and her aunt and uncle interstate. She had made herself familiar with the Institute's Code of Conduct and knew that her conduct was wrong. She said that had anyone at the nightclub who had known she was a teacher would have judged that she was behaving inappropriately. When asked by a Panel member how she would avoid future inappropriate behaviour she said that not consuming alcohol now was a help. When asked if the student was to blame she said it was not his fault but she didn't force him. The teacher said that her offence was not reported immediately because there was little school left and the offence was not picked up until February of 2012 but she had been expecting that there would be some sort of repercussion. During the intervening period she said she did not feel great and felt that people knew but weren't saying anything. When asked how she would deal with a subject in whom she was untrained if she was to return to school she said she would 'chunk' it into small parts rather than look at it as a whole and plan a day-to-day response. She would also seek advice. She said she was proud of how she had changed her life and become more independent and she would maintain her consultations with her psychologist. She said that she now sees a school function as a workplace.

Witness 1

Witness 1 said he was the teacher's father and a manager. He said he found out about his daughter's behaviour in February 2012 and the news had devastated his family. He said it was out of character for her. He had not seen her for seven months since she moved interstate but they talked regularly on the phone.

Closing Submissions

In his closing submission, Counsel assisting the Panel said that the teacher had had full registration since 2010 and had not taught since May 2012. He said the teacher had told the hearing that she was guilty of serious misconduct. At the graduation ceremony she had consumed excessive alcohol of her own accord. In her interview she had agreed that she had probably consumed about seven glasses which was dangerous for someone of her size. Her behaviour at the ceremony was inappropriate and getting into a car with students afterwards was inappropriate. She had conceded that she had kissed the student at the nightclub and that she had asked him not to tell anyone. This had placed the student in an unenviable position. The teacher had denied the truth of the allegations to her principal on a number of occasions because of her recognition that she could lose her job.

Counsel submitted that if the Panel found the teacher guilty of serious misconduct it would be appropriate to place a condition of her receiving psychological counselling. He recommended that her registration be suspended for a period of three months. The teacher should attend a psychologist for two sessions to increase her understanding of the power relationships between teachers and students because he was not sure that she understood this. It was his view that the teacher needed to develop her understanding of the importance of the standing and reputation of the profession in the community, the professional boundaries between personal and professional relationships and an increased understanding of the Code of Conduct and the Code of Ethics.

Counsel for the teacher submitted that the teacher had given the appropriate assurances about her consumption of alcohol. Rather than asking a psychologist to deal with specific

issues he thought it would be more appropriate to ask the professional in this case to talk to the teacher as he/she thought fit. Counsel said the behaviour occurred over a short period of time and previously her career had been without blemish. He said the teacher had been frank with the Panel and could see no good purpose for a period of suspension. He said he had resisted putting the teacher in the witness box because of her fragility and that it took real courage on her part to publicly admit to her drunkenness. He submitted that she had been frank, honest and open. He said that the proper penalty would be a reprimand or a caution.

DISCUSSION OF THE EVIDENCE

The teacher admitted that she had consumed a significant amount of alcohol at the graduation ceremony after not having eaten much during the day and being stressed about her classes. Her recollection of events at the graduation was vague, her admissions about the amount of alcohol she consumed and the written testimony of the teacher's mother the Panel had little doubt that the teacher was significantly affected by alcohol at a school function. The Panel thought it reasonable to assume that the teacher had compromised her professional relationship as a teacher by touching the student inappropriately while dancing with him. It was not surprising to the Panel that members of the student's family instinctively sensed when the teacher's behaviour became inappropriate because the community understands that teachers hold a unique position of trust and influence with students that should not be violated or compromised. The teacher demonstrated to the Panel that she shared that understanding of what is appropriate behaviour for a teacher on the day of the hearing but on that evening she was so affected by alcohol that her judgement deserted her in a dramatic way and would only deteriorate further after she left the graduation evening. Dancing with students at a school function is normal but professionals know there is a line to be drawn in regard to physical contact with students and that teachers are always being judged by members of the public including other students, parents and their colleagues.

Entering a car with students to go to a nightclub after drinking is not the action of a responsible teacher who understands appropriate boundaries and it was disappointing to the Panel that the teacher could not remember who was driving the car or who else was a passenger. The Panel was very aware of the inherent dangers posed for young people about driving with a car full of teenagers after drinking and the strenuous efforts most schools make to reinforce this message amongst their students. That the teacher failed to recognise that her responsibilities as a professional did not end when classes finished is not what the community has a right to expect.

By her own admission the teacher agreed that she had kissed the student while dancing with him. The kiss was for an extended period and she agreed that it was a serious kiss rather than just a peck on the cheek. The principal of the school described it as an intimate kiss. This occurred in a context of a public place, the teacher had by her admission consumed more drinks after arriving and other year 12 students were in attendance and watching. The Panel accepted that the teacher only kissed the student once and that she had no contact with the student before that evening, had not taught him and had no subsequent contact with him apart from the Facebook message she sent

the next day. The teacher agreed that her behaviour amounted to serious misconduct and the Panel thought it was an act which would lower the reputation of the profession in the eyes of the community and undermine community respect for the teaching profession. It also could give rise to a perception that in some way the teacher had abused her position of power and authority to groom a younger male for her own purposes. The Panel was satisfied that it was a substantial departure from professional standards and that she had placed the student in a difficult position in a significant number of ways. The Panel did not believe that the teacher had groomed the student or established an ongoing relationship with him but that it was a one-off act by a teacher affected by alcohol who showed little understanding of appropriate professional boundaries.

In contacting the student the next day the teacher's testimony was that she was embarrassed, remorseful, scared and disgusted by her realisation of what she had done. She realised that she had transgressed professional boundaries and that it was completely inappropriate. The Panel thought it was indicative of her state of mind that she did not realise that she was compounding the problem by what could be interpreted as an attempt to force the student to remain silent and protect her. The Panel saw this as further serious misconduct on the teacher's part but took the view that it was not an attempt to keep an ongoing serious relationship with a student a secret but in fact a desperate act of a teacher who lacked maturity at that time and failed to realise how her sending of the message on Facebook could be interpreted. It was more problematic for the Panel that in mid-February the teacher denied to her then principal that she had kissed the student and she maintained this position until 13 March 2012 when she finally told the truth. These denials over a month raised serious questions about the teacher's character and her fitness to teach. They were made over a period of time, they cannot be characterised as impulsive acts and they were made to a person who had encouraged her to come to the school and develop her career. It appeared that the teacher hoped that the matters would just disappear over time and she was fearful of losing her position but to the Panel it indicated naivety on her part that the truth would remain hidden and raised serious questions about her honesty.

Counsel for the Institute submitted that an appropriate penalty for the finding of the serious misconduct charge against the teacher was to impose a three month suspension. After careful consideration the Panel has decided to issue a reprimand to the teacher on the basis that

- Her misconduct, as she admitted herself, was serious rather than just misconduct.
- The inappropriate touching at the graduation ceremony and the kiss at the nightclub were at the lower end of an assessment of serious misconduct
- The assessment of serious misconduct not only related to inappropriate physical contact but the request by her to the student to remain silent about the events and the lack of honesty in her dealings with her principal for a period of time. The teacher committed a substantial departure from reasonable standards and her subsequent behaviour was not trivial or of momentary effect.
- The teacher's behaviour clearly contravened the Institute's Code of Ethics and offended Principles 1.2, 1.4. and 1.5 of the Institute's Code of Conduct.
- There was no evidence that the teacher, either before or after the events of 2 December 2011, had attempted to develop an on-going relationship with the student.

- The explanation for the one-off event appeared to the Panel to be the result of excessive alcohol consumption.
- The teacher's age, her relative lack of teaching experience, her immaturity at the time and her indications of remorse and insight at the hearing were taken into account.

The Panel in no way wishes to minimise the damage the teacher's conduct reflected onto the profession as a whole or its condemnation of her behaviour. The Panel's choice of a reprimand, a penalty below that of a suspension, should indicate to the teacher that any repetition of her misconduct would have serious professional repercussions.

In terms of the teacher's fitness to teach the Panel was guided by *Davidson v Victorian Institute of Teaching (2007) VCAT 920 (169-170)* which outlined a number of factors which needed to be considered. The Panel decided that, on balance the misconduct complained was not of a continuing or persistent nature although the length of time between denial and confession was troubling to the Panel. The Panel heard both written and oral evidence from the teacher expressing her acceptance of responsibility for her unprofessional and inappropriate behaviour. She showed a good understanding of the principles of the Code of Conduct and the importance of maintaining proper boundaries between student and teacher. She also indicated that she understood the importance of the maintenance of the reputation of the teaching profession. She showed remorse as she recognised the harm she had inflicted on the student, his family and the school community. The Panel was satisfied that there was no doubt the teacher would behave in the classroom in the future. Her act of serious misconduct is unlikely to re-occur and explicable in context but this is insufficient to demonstrate a lack of fitness to teach. The underlying attitudes were assessed at the time of the hearing and the Panel believed that the teacher showed a much better understanding of appropriate behaviour than she had over the 2 December 2011-13 March 2012 period. The Panel could find no evidence that the teacher's whole approach to teaching was profoundly and irretrievably flawed or that she could not be trusted with children in her care. The teacher was candid during the hearing and had provided an adequate explanation for her behaviour which was corroborated by other evidence. She indicated that she was continuing to see a psychologist who had given her valuable strategies to deal with stress. The Panel recommends that the teacher continues regular consultations with her psychologist.

The Panel came to the view that the teacher had experienced a very big wake-up call and she acknowledged that she had addressed areas of her life that needed changing. The teacher at the time of the offences had used alcohol recklessly partly as her way of dealing with stress. She told the Panel that she had reduced her alcohol intake to the point that she rarely drinks because she realised that she is a person who does not cope well with it. She continues to consult a psychologist who assists her to develop strategies to deal with stress and her weight issues. The teacher had come to appreciate that she had a passion for teaching and she appreciated what had been taken away from her. She had strong support from her family and this was supported by their appearance at the hearing.

FINDINGS

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 3 October 2012 the Panel found the teacher was guilty of serious misconduct and fit to teach. The Panel issued a reprimand to the teacher.

DETERMINATION

The Panel determined that the teacher remains registered as a teacher in Victoria.



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GARRY SALISBURY, CHAIRPERSON



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per:
HEATHER SCHNAGL, REGISTERED TEACHER



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per:
PAUL WILHELM, REGISTERED TEACHER