

## **VICTORIAN INSTITUTE OF TEACHING**

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

**NUMBER:** 124

**REGISTERED TEACHER:** James Richard Michael FIFORD

**PANEL MEMBERS:** Marilyn Mooney, Chairperson  
Kevin Pope, Registered Teacher  
Anne Farrelly, Registered Teacher

**ATTENDANCE:** The teacher was represented by Mr Hugh Burchill, Barrister  
Ms Melinda Richards, Counsel Assisting with Ms Jennie Somodio, Instructing Solicitor on behalf of the Victorian Institute of Teaching

**DATE OF HEARING:** 12 and 13 September 2012

**DATE OF DECISION:** 20 September 2012

#### **FINDINGS AND DETERMINATION:**

On 20 September 2012 the Panel determined that the teacher's registration would be suspended until 30 April 2013 and that the following conditions must be met before the suspension of his registration would be lifted.

The teacher is to attend at least six sessions with his current psychiatrist or a registered psychologist of his choice where the following matters are to be addressed:

- an in-depth analysis of the Institute's Code of Ethics and Code of Conduct clearly identifying the points at which his behaviour deviated and the potential/real consequences, both direct and indirect.

- analytically reflect on how and why the relationship progressed, concentrating on the role that he played personally, and noting the range of strategies that he could have put in practice to prevent what both evolved and eventuated.
- a clear understanding of the importance of professional behaviour in maintaining the reputation of the teaching profession and the trust that the community is entitled to place in teachers.
- a clear understanding of the uneven balance of power between teachers and students and the potential damage that can be caused by inappropriate relationships with vulnerable students.

Following the six sessions with the psychiatrist or psychologist, the teacher is to provide a report to the Institute prepared by his treating specialist that addresses the above points and explains how the teacher has satisfied each point.

The teacher is to provide a report written by him illustrating his insight into why his conduct, the subject of this decision, was inappropriate and setting out strategies he has developed to ensure the conduct will never be repeated.

The suspension of the teacher's registration will not be lifted until the Panel receives both reports and is satisfied that the reports address all the relevant issues set out above.

## REASONS

### BACKGROUND

The teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 23 January 2007.

By letter dated 22 February 2011, 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. On 10 February 2011, the teacher resigned from his employment at the school after being notified that the school would conduct an investigation into allegations of inappropriate conduct with a year 9 student.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 25 May 2011 and the Committee decided to conduct an investigation.

On 28 March 2012, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 14 August 2012 was served upon the teacher by registered post on 18 August 2012.

### 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 registered teacher during 2010 at the school, you:*

1. *Violated your professional relationship with Year 9 student, the student, by sending the student 66 SMS text messages documented in the attached Table, without a valid context, including:*
  - a. *Late night text message to the student (messages 16, 28, 29, 30, 35, 36, 37, 38, and 55 in the Table)*
  - b. *Repeated text messages on the same day or evening including on 3 April 2010, 5 April 2010, 8 April 2010, 9 June 2010, 3 September 2010, 7 September 2010, 11 October 2010, 25 October 2010, 7 December 2010 and 10 December 2010*
  - c. *On 8 April 2010, asking the student for a dance and asking her to describe her dress (message 13 in the Table)*

- d. On 9 April 2010, telling the student you liked the name “cheeky cheeks” for her and that it was “suitable”, ending the message with a symbol understood to mean that you were “winking” at her (message 22 in the Table)
- e. Prior to and during a school excursion at town B:
  - i On 7 September 2010 telling the student that you “MUST catch up” and asking her to “meet at the goldfield tents or down a mineshaft” then telling the student you would “try and sneak away” to meet her (messages 33 and 34 in the Table)
  - ii On 10 September 2010 telling the student “a secret message” would be left for her somewhere in town at a tourist attraction (message 36 in the Table)
- f. On 7 December 2010, sending the student a message asking her to smuggle confectionary to the Presentation Night for you and telling her you were “shattered” when she couldn’t give them to you (messages 53 and 55 in the Table)
- g. On 10 December 2010 asking the student to sneak away from a camp to go to a concert: “If I can get 2 tix u want 2 sneak back to Melbs 4 a nite? ;)” (message 58 in the Table)
- h. On 10 December 2010, telling the student you were “Friends 4 sure! V similar outlooks. I like ur cruzy kind and serene way surfer chick” (message 62 in the Table)

A ‘Table of SMS Messages’ which corresponds to the allegations set out above was attached to the Notice of Formal Hearing.

2. Violated your professional relationship with the student in circumstances where:

- a. On an occasion in mid-2009, when the student was upset in class, after the other students left at the conclusion of the class, you closed and locked the door of the classroom where you isolated yourself and the student in the classroom
- b. On the last day of school in 2010, when the student gave you a gift, you asked the student to give you a kiss and a hug, which she did, and then you gave her another hug
- c. On two occasions in 2010, you suggested to the student that you keep in touch over the holidays
- d. On 19 March 2010 you offered to “burn” the student a CD of music and your wedding song.

## **THE EVIDENCE**

### **The Student**

The student did not attend the Hearing but did provide a signed affidavit confirming her written statement as true and accurate. In recognition of her emotional state both the Institute and the teacher chose not to call her as a witness.

### **Witness 1**

Witness 1 gave evidence under oath and confirmed her written statement as true and accurate. She told the Panel that in 2009 the teacher was the student's Year 8 history teacher. Witness 1 said that over the course of the year her daughter spoke increasingly about the teacher. She said it was clear that the teacher was well liked by her daughter as she spoke about him more than any other teacher and in a personal way, such as the teacher telling her he wanted a baby but his wife did not. The Panel heard that her daughter wanted to please the teacher and worked very hard on his projects to a greater extent than before.

Witness 1 told the Panel that on the Year 9 camp in 2010 teachers had, for security reasons, given their mobile phone numbers to the students. She said her daughter told her that "chit chatty in jokes" text conversations ensued between the students and the teacher. One conversation involved the upcoming dance classes and her daughter's excitement around getting a new dress. Witness 1 said that her daughter had mentioned that the teacher would be attending one of the classes but on discovering that he wasn't she was downcast and seemed very disappointed.

In the Term 3 holidays witness 1 told the Panel that their family visited a tourist attraction. She said that prior to the holidays their daughter had mentioned to them that the teacher would also be at the tourist attraction with the Year 12 girls. She said that their daughter was quite excited that the teacher would be there saying "isn't that amazing – we'll see him." She was then disappointed when she later found out that it wasn't the same weekend.

Witness 1 told the Panel of several incidents that occurred at the end of the year. One was on Presentation Night when her daughter spoke about a mix up concerning lollies that were supposed to be shared with the teacher. She said her daughter thought it was "... sort of funny that the teacher was waiting there with lollies". Also she told of her daughter giving the teacher a Christmas gift even though he had not been her teacher that year. Witness 1 told the Panel that she questioned her daughter on this but her daughter said "Oh no, but he's special and I want to give him this gift." Witness 1 said that about a week later her daughter, in a "by the way" approach, told her that the teacher had kissed her on the cheek to say goodbye. Witness 1 said she believed this was her daughter's way of raising this issue with her parents. The Panel heard that witness 1 was disturbed by this and on Christmas Day canvassed opinions including that of her brother, a teacher. She said opinions given were that it was odd and inappropriate.

Witness 1 told the Panel that in January 2011 her husband had received a rude message sent from their daughter's phone. The daughter told her parents that a friend had taken her phone and sent rude text messages to people in her contacts list. Witness 1 confiscated the phone and while scrolling through to see who else had received the messages discovered that her daughter had texted the teacher on Christmas Day. Discussions with their daughter discovered that she and the teacher had been exchanging text messages throughout the year. Her daughter also revealed that the kiss at the end of term wasn't a random kiss on the cheek but in fact there were two kisses on the cheek and two hugs. She said that the teacher also asked her daughter to kiss him on the cheek and give him a hug.

Witness 1 told the Panel that her daughter was confused with the whole situation, saying “We were just chit-chatting, it’s probably alright, isn’t it?” The Panel heard that the student was upset that the matter had been brought to light and didn’t want her parents to see the messages. After scrolling the daughter’s phone in more detail other text messages were discovered where the teacher suggests secretly meeting at the tourist attraction, and sneaking away to meet him if he can get tickets to the music concert.

Witness 1 told the Panel that her daughter confided in her sports coach, a teacher at another school, who advised her that what the teacher was doing was wrong and for her to stop the contact. She did for a while but then the text messages resumed and she didn’t confide in her sports coach again. The student also kept the messaging secret from her friends. The Panel heard that the school was contacted and discussions had over the serious nature of the teacher’s behaviour.

Witness 1 told the Panel that ongoing discussions with her daughter revealed a young girl upset if the teacher appeared to be ignoring her as she had come to rely on that special attention. She was also struggling with whether or not the contact was appropriate.

The Panel heard that the student had gone through a lot of confusion – “from longing for the teacher, to anger at him.” It was also a struggle at school where the girls were talking about the teacher leaving. Some of the girls hardly spoke to her and her best friend didn’t speak to her again. Witness 1 said that the effect on the family had been considerable with strained relationships in 2011. She said her daughter was disrespectful and angry and displayed “above normal” adolescent behaviour. She said that she felt they were losing their daughter.

In response to the Panel’s questioning witness 1 confirmed that in 2009 the family was under strain and that her daughter was struggling with those issues. She said that a teacher could ask a student if there are any problems but should then refer it to the appropriate person in the school. She said that students shouldn’t be forced or pushed to disclose issues as her daughter was.

Witness 1 told the Panel that her daughter moved to a different school when the situation became untenable due to a lack of support and pastoral care from the school and her daughter becoming alienated from her friends.

The Panel heard that the student is becoming more emotionally stable, and witness 1 stated that she is beginning to see improved academic endeavour and results as well as improved self-esteem. Witness 1 emphasised that the improvement is a work in progress and comes from the huge effort made by her daughter. The Panel heard that her daughter sees the situation as a betrayal of trust. She is much more suspicious and wary of people and has trouble taking compliments from people, particularly male teachers.

She told the Panel that her daughter broke down when discussing this hearing. She said that her daughter didn’t want to appear at the hearing, feeling that she had done enough having put hour upon hour into getting her statement correct.

**Witness 2**

Witness 2 gave evidence under affirmation and confirmed his written statement as true and accurate. Witness 2 told the Panel that he is the student's father and is a business manager at an ICT company.

Witness 2 explained to the Panel that in January 2011 he received a text message, sexual in nature, from his daughter's phone. After questioning his daughter and looking into her phone the text messages from the teacher were discovered. There were no text messages from his daughter as these had been deleted. Witness 2 said that he and his wife then had discussions with the school principal who asked him to copy the messages which he did.

The Panel heard that witness 1 and witness 2 were alarmed when they started to look at the messages. They had further discussions with the school principal as they were concerned about the teacher being at the school when their daughter returned at the start of the school year.

Witness 2 told the Panel that 2011 was a very difficult period. He said that as his daughter was in a poor emotional and psychological state they sought counselling for her from the school but felt the school support was very lacking. The Panel heard that their decision to change schools was a good one as her physical and emotional state has improved. She is much happier, has a new friendship group, and is busy with school and sports.

The Panel heard that when asked if she would appear at this hearing, his daughter broke down. He said that whilst she is travelling better the issues are still on her mind. Witness 2 said that he believes it would have impacted on her negatively to go back over it all again. He emphasised that she had put a lot of time and effort into her original statement.

**The principal**

The principal gave evidence under oath and confirmed her written statement as true and accurate.

The principal told the Panel that she is principal of the school and has held this position for the past 11 years. She has been working in a variety of roles in the education system for over forty years. The school has approximately 790 students and a staff of approximately 84 teachers.

The Panel heard that the teacher was employed as a teacher at the school from 2007. He taught English and History across various year levels and was appointed History Co-ordinator in 2008 and Head of History in 2009 and 2010. In 2007 and 2008 the teacher taught Year 9 English and Years 9-11 History. In 2009 he taught History to Years 7-9 and 11. In 2010 he taught Year 8 English and History to Years 8, 9, 11 and 12. He was also a Year 9 form teacher each year between 2007 and 2010.

The principal outlined to the Panel that she became aware of the inappropriate text messages between the student and the teacher at the end of January 2011. She said the Head of Pastoral Care contacted her after witness 1 had reported the matter to her. The principal said she then visited the student and her mother and discussed the issues fully and scrolled through the text messages. She told the Panel that she questioned the

student about how long the messaging had been going on, the sequence of events, and the nature and meaning of the texts. She said she asked the student's father if he could download and photocopy all the messages. She told the Panel that during this visit witness 1 told her the teacher had asked the student to give him a kiss and a hug.

The principal told the Panel that, with the Head of the Senior School present, she told the teacher that she had seen concerning text messages he had sent to the student and that she would be standing him down until her investigation took place and a further meeting could be organised. The Panel heard that the principal subsequently wrote to the teacher outlining the issues, allegations and her concerns. The principal said that a further letter was sent to the teacher informing him of the meeting date and time and including a copy of the school's IT policy and the Institute's Code of Conduct for the teaching profession, which she said he had previously received and signed off on. The Panel heard that at this second meeting the text messages and the allegation that the teacher had asked the student to give him a kiss and hug were discussed. The principal said that the teacher was very teary and remorseful and repeated many times that he had no intention to harm the student. She said that he didn't have any satisfactory explanation for the fact that some of the text messages were late at night. The principal told the Panel that the teacher believed and intended that the contact had been in a pastoral sense as the student was upset about something to do with her mother and father. She said he denied kissing or hugging the student but explained it as the student trying to give him a kiss. The principal told the Panel that the teacher admitted sending the texts but categorically denied any physical contact of any kind. The Panel heard that as the situation was untenable the school accepted the teacher's resignation.

The principal told the Panel that the teacher was an outstanding teacher and an acknowledged leader in his field. She said that the teacher had signed off on the various school policies that sit alongside the Institute's procedures and are also available on the school website. The Panel heard that the school handbook is given to all staff who sign off that they have read and understood the contents. The principal said that the school's procedures and policies are reviewed on a three yearly basis and are due for review this year. She said that there is no policy regarding teacher-student text messaging or social media but that it will be looked at in the review.

The principal stated that if a teacher becomes aware of pastoral care issues with a student then the process in the school is to refer it to the counsellor or the pastoral care co-ordinator depending on the matter. The principal told the Panel that the school followed through on all complaints of bullying of the student. She said the Head of Pastoral Care met with all the girls and encouraged them to sit with the student. The Panel heard that witness 1 was very concerned about the breakdown of her daughter's friendship group and tried to intervene and seek a resolution for her daughter. The principal felt that the interference of witness 1 led to the student leaving the school.

### **The teacher**

The teacher gave evidence under oath and confirmed his written statement as true and accurate. He told the Panel that his first teaching appointment was at the school in 2007 where he taught History and English to years 7–12.

The teacher said that the induction process involved new teachers meeting prior to commencing at the school. They were ascribed a mentor and given an induction handbook that covered the school's policies and procedures. The teacher said his mentor was a science teacher whom he met with on an informal basis as there was no structured or formalised program. He told the Panel that he loved teaching and was excited to be a teacher. He said he became involved in many extra curricula activities that were time consuming and onerous but fulfilling.

The teacher acknowledged to the Panel that his conduct in relation to the text messages outlined in allegations 1(a-h) was a clear violation of his professional relationship with the student. The teacher said that he gave particular emphasis to the welfare of students and it was in this context that he maintained the contact with the student who he believed was dealing with family problems. He said that he believed he was supporting her but that he hadn't adequately reflected at the time on the ramifications.

The teacher explained to the Panel that the student obtained his mobile phone number when attending camp. For security reasons teachers gave out their numbers to the students who were allowed independent activities. He said that there was nothing secretive or sinister in the late night texting, explaining that it was in response to the student's text messages or after a night football match. He believed that not to respond would have been regarded as rude or impolite and might exacerbate her feelings of not being listened to or ignored. The teacher told the Panel that all the students were excited about the formal school dance and the dresses that they would be wearing. He said that he only sought to express an interest because the student was so excited.

The Panel heard that in relation to the "cheeky cheeks" nickname, the teacher maintained that he did not ascribe the name to the student but that he was making a commentary on it in response to a text from the student. The teacher told the Panel at that time he was using an old style mobile and he had no understanding of the symbols used for "winking". He said his intention was to make a smiley face not a wink. The teacher explained that his comment to the student regarding leaving a secret message and sneaking away to meet him at the tourist attraction was an innocent but stupid throwaway line that was never meant to happen. He said that it was part of the banter of the conversation meant in fun.

The teacher stated the student had indicated that the Presentation Night would be a long and monotonous night and she would therefore be taking lollies along. He said that he was not instigating any smuggling of lollies and that his comments were intended to be no more than light-hearted, jocular banter. The teacher told the Panel that his comment to the student that she "sneak" back to Melbourne if he could get tickets to the music concert was meant to be a flippant line. He said that the comment was never intended to be serious and he never imagined that the student could have taken it seriously.

The teacher told the Panel that the suggestion that he and the student were alone in the classroom at any time with the door locked is untrue. He said that he was aware that the student had become withdrawn and was not her cheerful self. He said that he attempted to discover the cause regarding it as entirely consistent with his pastoral obligations and

duties as a teacher. The teacher stated that they were never alone as students were packing up throughout the entire conversation.

The Panel heard that gift giving is a common occurrence at the end of the year. He said they were in the corridor when the student gave him a gift and initiated giving him a hug but it was all impractical as he had his arms full with books, etc. The teacher categorically denied that he ever sought, or gave a kiss or hug to the student and said that there was no kiss at all from either of them. The teacher told the Panel that he wished the student a good holiday but did not suggest that they keep in touch over the holidays.

The teacher stated that the allegations were quite literally catastrophic for him, plunging him into depths of despair. He said that he had set his heart on a teaching career and felt great shame that he violated the trust of people and let people down. He said that he was ashamed that he hurt the student, her parents, his colleagues, and the teaching profession.

Under cross examination the teacher confirmed that he has been employed in a part-time capacity since May 2011 with various educational organisations.

He told the Panel he had the personal conversation with the student in the classroom because he had noticed that she was quiet and not her cheery self. He said he asked her if something was wrong and persisted in asking her several times. He stated that the student didn't elaborate so he continued and asked her if there was anything that the school could do. He denied badgering the student. The teacher said that he didn't recall offering to buy her lunch but as she looked "pale and peaky" and was not acting normally he suggested that he would have asked if she had lunch.

The teacher confirmed that he was not the student's subject teacher or form teacher in 2010. He said that she may have been involved in extra curricula sports such as cricket or basketball or minor lunchtime activities that he conducted. He told the Panel that it was normal practice for teachers to receive gifts from students but he could not recall receiving gifts from any other student who he did not teach.

He denied suggesting to the student that they keep in touch over the holidays and denied that he asked for, or gave, a kiss or hug when she gave him an end of year present. The teacher rejected the proposition that he was singling out the student or that he was flattered by the crush the student had on him. He said that his text messages were not meant to be flirtatious but that he was trying to be polite and friendly. He said that his choice of language was poor and that on reflection he was horrified with his choice of words.

The teacher told the Panel that although the Institute's Code of Conduct was pinned on the school noticeboard he had not read it. When asked to identify the relevant principles from the Code the teacher took considerable time in selecting - *1.5 – Teachers are always in a professional relationship with the students in their school whether at school or not; 1.6 – Teachers maintain a professional relationship with parents (guardians and caregivers)*. When prompted by Counsel Assisting, the teacher accepted that principle *1.4 – Teachers maintain objectivity in their relationships with students* was also relevant.

The teacher stated that he has been consulting a psychiatrist who has helped him become aware of and understand what he has done and the impact his behaviour has had on others. He said that he regrets that he is unable to contact the student or her family to apologise for his behaviour.

When asked about his reflections and insight into his behaviour, the teacher stated that he had blurred the line and crossed professional boundaries. He said that he now recognises the difference between being a friend and being friendly. The teacher articulated a range of strategies that he would use in the future if he were to teach again. They included: no communication outside of a school context; demand a school phone; wouldn't give out his phone number; greater control over exuberance; be firm but fair; more professionally measured. The teacher stated that in the future when dealing with Year 8, 9, and 10 girls, he would be vigilant and diligent in seeing the way he was perceived by them.

In response to questions from the Panel the teacher said he believed the student's parents would feel outrage, disappointment, betrayal and be fearful for their daughter. He thought the impact on the student included losing friends and having to move schools.

### **Mr Whitehouse**

Mr Whitehouse gave evidence under oath and confirmed his written statement as true and accurate. He said that he was a registered teacher and lecturer at Melbourne Graduate School of Education.

Mr Whitehouse said that he first met the teacher in 2006 when the teacher was enrolled in the Diploma of Education and he has had professional contact with him ever since. Mr Whitehouse told the Panel that the teacher is one of the most highly regarded History/Humanities teachers in Victoria and has made and continues to make a huge contribution to the subject.

Mr Whitehouse stated that the teacher confided in him regarding this matter and said that he believes him to be deeply sorry and regretful for his error of judgement. He told the Panel that the teacher acknowledges that he has violated professional boundaries and realises that a teacher can't place himself in the student's peer group.

### **Colin Fiford**

Mr Colin Fiford gave evidence under oath and confirmed his written statement as true and accurate. Mr Fiford said that prior to retirement he served as a naval officer, taught at RMIT and worked as a senior manager.

Mr Fiford told the Panel that this is the climax of 18 months of tremendous anguish for his son. He said that his family has been his sounding board and they see him regularly tearful and remorseful about his actions to the student and her family. He said that his psychiatrist and his family try to give him strategies to cope and to move forward.

Mr Fiford said his son has the deepest remorse and takes the matter very seriously. He stated that he made full and frank admissions and is stressed about the fact that he can't apologise to the family.

## **DISCUSSION OF THE EVIDENCE**

The Panel was mindful that the student chose not to attend the Hearing and therefore her evidence could not be tested under cross examination. Her signed written statement of 13 January 2012 was tendered accompanied by an affidavit attesting to the veracity of her written statement and its three attachments. The Panel considered this evidence where corroborated by other witnesses. The Panel notes that in the interests of the student's welfare, the Institute and the teacher chose not to call the student as a witness.

The Panel's considerations were assisted greatly by the fact that the teacher admitted to Allegation 1a-h and that his behaviour amounted to serious misconduct. The admissions are to his credit although he challenged and denied the factual basis of Allegation 2a-d.

The Panel heard compelling evidence from the student's parents of the negative impact the matter has had on them as a family and on the student. The student's mother told of the anger and distrust the student levelled at them for quite some time. The Panel is aware that although the student's emotional state is improving she is still working through many issues emanating from the teacher's conduct towards her.

The teacher's love of teaching and his teaching credentials are not in question. He has enjoyed a meteoric rise within his school and is clearly held in high regard in his field of expertise. The teacher's father was a sincere and credible witness who acknowledged that his son felt great shame that he had crossed professional boundaries and had made a grave error of judgement.

The teacher encouraged, developed and continued a relationship with a student who he believed was vulnerable and in need of pastoral care. The fact that he did not refer the matter to the pastoral care team demonstrates to the Panel a serious lack of judgement and understanding of, not only the obligation to work within the limits of his professional expertise but also of his duty of care for a student.

The Panel was concerned that the teacher singled out the student and conducted the communication in secret. Of great concern was the increasingly personal, flirtatious and inappropriate language used in the text communications.

The teacher maintained that he meant no harm to the student and that he was concerned for her welfare and simply tried to validate her. The Panel finds it hard to reconcile these sentiments with his actual behaviour towards the student. The teacher's explanation that he was trying to be a friend and that the language he used in his text messaging was meant to be jocular, cheery banter was seen by the Panel to be a feeble and at best naïve explanation for his inappropriate behaviour. Of great concern to the Panel is that a male teacher in an all girls' school could demonstrate such blindness to a student's behaviour towards him.

The Panel notes the major effect that the teacher's behaviour has had on the student, her family, and the school. These include – the student being angry, losing friends, changing schools, avoiding praise and compliments, arguing with parents; her parents having conflict with school and other parents; and the school losing a valued teacher resulting in a teaching vacancy at the school.

Although the student's written account was detailed and coherent the Panel had no hard proof concerning Allegation 2a, b, and d. Regarding Allegation 2a, there was agreement that there was a personal discussion in the classroom but the teacher maintained that they were never alone and the door was never locked. Regarding Allegation 2b, it is accepted that the student gave the teacher a gift at the end of the year but discrepancies exist between the student's account and the teacher's as to the teacher asking for a kiss and hug. The Panel believed the teacher to offer a credible account of this situation. Regarding Allegation 2c the evidence is strong that the teacher did suggest to the student that they keep in touch over the holidays. Although the teacher denies this allegation the texts are entirely consistent with this occurring.

## FINDINGS

The purposes of disciplinary proceedings in relation to a profession are to protect the public, to maintain proper standards of conduct for the profession, and to protect the reputation of the profession: *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279.

The task of the Panel is first to determine whether or not the teacher has engaged in serious misconduct and whether he is fit to teach. Misconduct in a professional sense is conduct which would be reasonably regarded as disgraceful or dishonourable by fellow professionals of good repute and competency: *Guss v Law Institute of Victoria Ltd* [2006] VSCA 88, [1], citing *Allinson v General Council of Medical Education and Registration* [1984] 1 QB 750, 763.

Whether misconduct is serious will depend upon the facts of each case. Conduct would not be serious if it was trivial or of momentary effect at the time. To be serious, conduct must be a substantial departure from the standards which might reasonably be expected of a registered teacher. The departure from such standards must be blameworthy, and deserving of more than passing censure. See *Parr v Nurses Board of Victoria*, Victorian Civil and Administrative Tribunal, Kellam J, 2 December 1998.

From all the available evidence and the teacher's admission to **Allegation 1a-h**, the Panel finds that allegation and **Allegation 2c** made out and finds the teacher guilty of serious misconduct.

**Allegation 2a:** The Panel accepts that a personal discussion took place in the classroom but is not persuaded that the door was locked or that the teacher and the student were alone in the classroom. **Allegation 2b and d:** The Panel did not find sufficient evidence to substantiate.

The student's and the teacher's accounts differed substantially and as the student's evidence could not be tested the Panel could not be reasonably satisfied that Allegation 2a, b, and d was made out.

The Panel accepts that the teacher has reflected on his behaviour and feels great remorse and shame for his actions. However, the Panel is not convinced that he has developed a

deep understanding or insight into the motivations behind his behaviour nor the consequences and impact of his behaviour on the student, her family, the school, and the profession.

It is acknowledged by the Panel that the teacher has sought counselling and psychiatric assistance to work through some issues and to gain insight into his behaviour. To date there is very little evidence from the psychiatrist as to what content has been covered and what understandings have been gained. The Panel found it disappointing that the teacher had such little knowledge and understanding of the profession's Code of Conduct.

"Fitness to teach" is now defined in s 2.6.1 of the Act to mean, in relation to a person, "whether the character, reputation and conduct of a person are such that the person should be allowed to teach in a school". The question in each case 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: see *Siguenza v Secretary to the Department of Infrastructure* [2002] VSC 46, [33]-[34].

In considering whether or not the teacher is fit to teach the Panel took into account the duration of the misconduct, his sincere remorse, his admissions to the allegations, and the counselling he has initiated in an attempt to understand and change his behaviour. The Panel recognises the steps the teacher is taking in this regard. However it is of the view that he is in need of further reflective counselling to assist him in gaining a deeper insight into his behaviour and the effects it has had on others, than he presently exhibits.

The Panel had to consider whether the teacher has engaged in serious misconduct and/or was unfit to teach. The Panel found that the teacher violated his professional responsibilities and betrayed the trust placed in him by his school, colleagues and parents. The teacher's conduct reflected attitudes inconsistent with the moral qualities required of a teacher and is guilty of serious misconduct and is unfit to teach for the duration of the suspension.

## **DETERMINATION**

On 20 September 2012 the Panel determined that the teacher's registration would be suspended until 30 April 2013 and that the following conditions must be met before the suspension of his registration would be lifted.

The teacher is to attend at least six sessions with his current psychiatrist or a registered psychologist of his choice where the following matters are to be addressed:

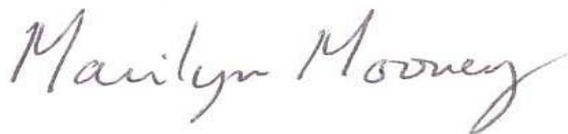
- an in-depth analysis of the Institute's Code of Ethics and Code of Conduct clearly identifying the points at which his behaviour deviated and the potential/real consequences, both direct and indirect.
- analytically reflect on how and why the relationship progressed, concentrating on the role that he played personally, and noting the array of strategies that he could have put in practice to prevent what both evolved and eventuated.

- a clear understanding of the importance of professional behaviour in maintaining the reputation of the teaching profession and the trust that the community is entitled to place in teachers.
- a clear understanding of the uneven balance of power between teachers and students and the potential damage that can be caused by inappropriate relationships with vulnerable students.

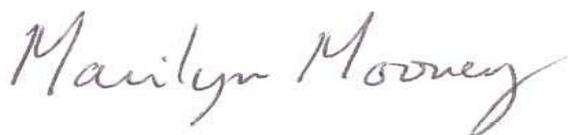
Following the six sessions with the psychiatrist or psychologist, the teacher is to provide a report to the Institute prepared by his treating specialist that addresses the above points and explains how the teacher has satisfied each point.

The teacher is to provide a report written by him illustrating his insight into why his conduct, the subject of this decision, was inappropriate and setting out strategies he has developed to ensure the conduct will never be repeated.

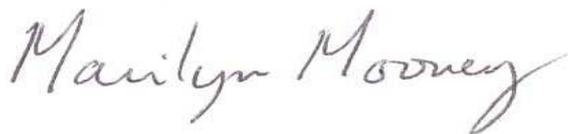
The suspension of the teacher's registration will not be lifted until the Panel receives both reports and is satisfied that the reports address all the relevant issues set out above.



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**MARILYN MOONEY, CHAIRPERSON**



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**per:**  
**KEVIN POPE, REGISTERED TEACHER**



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**per:**  
**ANNE FARRELLY, PANEL MEMBER**