

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 129

REGISTERED TEACHER: Vera MINCIC

PANEL MEMBERS: Garry Salisbury, Chairperson
Anne Farrelly, Registered Teacher
Paul Wilhelm, Registered Teacher

ATTENDANCE: The teacher did not attend the Formal Hearing
Ms Anne Sheehan, Counsel Assisting with Ms Katrina Galanos, Instructing Solicitor on behalf of the Victorian Institute of Teaching

DATES OF HEARING: 9 & 10 October 2012

DATE OF DECISION: 30 November 2012

FINDINGS AND DETERMINATION:

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 10 October 2012, the Panel found the teacher guilty of serious incompetence and not fit to teach.

On 30 November 2012, the Panel decided to cancel the registration of the teacher.

REASONS

BACKGROUND

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

By letter dated 21 September 2009, the employer notified the Institute that it had taken action in relation to the conduct and fitness to teach of the teacher. The employer advised that the teacher may no longer seek employment in any capacity in any employer school unless otherwise advised, following her resignation prior to the conclusion of unsatisfactory performance procedures.

The teacher resigned from the employer, effective from 20 August 2009.

The matter was referred to the Disciplinary Proceedings Committee (the Committee) of the Institute on 18 November 2009 and the Committee decided to conduct an investigation.

On 16 November 2011, the Committee considered the Investigator's report and decided to refer the matter to a Formal Hearing.

A Notice of Formal Hearing dated 14 September 2012 was served upon the teacher by registered post on 17 September 2012.

THE ALLEGATIONS

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

Whilst employed as a registered teacher at the school in 2009 the teacher:

- 1) *Failed to exercise appropriate classroom management techniques. Observations of that failure included the following examples:*
 - a. *On or about 6 April 2009, in her period 6, year 8E science class, in circumstances where:*
 - i. *A great proportion of the class were disengaged and idly chatting or looking out the window.*
 - ii *Students 1 and 2 were talking loudly and were turned away from her.*
 - iii *There was no clear behaviour management plan in place, whereby some students had no warning before being removed from class and others were spoken to many times. There was no negotiation of behaviour, moving of students or restatement of the rules.*
 - iv *Too many students (up to 6) were sent out of the classroom at a time.*
 - v *Some effort was made to quieten students at the front of the classroom while other noisy students in the classroom were ignored.*

- b. *On or about 27 April 2009, in her year 8B science class, failed to effectively manage the class where students simply got up and left the classroom.*
 - c. *On or about 2 May 2009, in her year 8B science class, failed to adequately explain the content or purpose of the lesson to a female student who was being disruptive. As a result, this student continued to disrupt the class. This culminated in some members of the class walking out of the classroom in protest.*
 - d. *On or about 21 May 2009, in her period 3, year 8A class, failed to manage the class in circumstances where students were not engaged in the lesson.*
 - e. *On or about 9 June 2009 in her period 2, year 8G science class, when students were observed to be sitting on science benches and chatting with no lab coats on.*
- 2) *Failed to effectively communicate instructions and engage students in active learning. Observations of that failure included the following examples:*
- a. *On or about 6 April 2009, in her period 6, 8E science class:*
 - i *Did not give adequate direction or structure for students.*
 - ii *Did not put any notes on the board.*
 - iii *Did not give students further instruction about what to do after they had finished their work sheet and discovered the answer to a power point question. Students were confused and left waiting for further instruction and guidance to be provided.*
 - iv *Was unable to gain the class's attention in order to start a discussion.*
 - b. *On or about 21 May 2009, in her 11.30am period 3-4, year 8A science class:*
 - i *Used the photocopier in the staff room while the class had commenced, leaving students noisy and unattended.*
 - ii *Did not write clear instructions on the board about what students were to do.*
 - iii *Showed students experiment results before they had a chance to do the experiment themselves.*
 - iv *Interacted with one of the students showing him marble chips while other students were talking and not engaged.*
 - v *At 11.55am, still had not given the class any task to do. Students were bored and not engaged, drawing, scribbling or tapping their pens.*
 - vi *At 12.00pm, wrote chemical equations on the board, but did not ask students to listen or to copy what was written. No instructions were given to start the task. Some students started while others were told not to. There was confusion in the classroom about what to do.*
 - vii *Following the bell for period 4, students still had no instructions to start the prac. Some female students started. Some male students went to start and were told not to, but no other instructions were given about what they should do.*
 - c. *On or about 7 August 2009, in her year 8B science class, where 5 students were looking at the class pet rather than working. Students told visiting teacher, teacher 1 that they couldn't understand the practical experiment they were meant to be doing.*

d. The teacher would generally take a lengthy time, sometimes up to 15 minutes to set up science equipment before starting to teach, then found it difficult to gain or re-gain students' attention.

3) *Failed to appropriately assess the work of year 8 students, including:*

a. In around March 2009, in relation to a year 8 test:

- i Gave some students 4/4 marks for a question about the definition of atoms and elements, in circumstances where they had not answered the question correctly.*
- ii When questioned by staff member, teacher 2, as to why a large proportion of the year 8 class received 100% for the test, replied that the students were 'good kids' and that she wanted to encourage them.*

THE EVIDENCE

Counsel Assisting informed the Panel that the teacher would not be attending the hearing and tabled letters from the Institute recommending that she seek legal advice about her decision not to attend. On another matter, the teacher claimed that she had achieved consistent career progression prior to her arrival at the school. Information from school 1 contained in the teacher's personnel file indicated that this was not the case and that the principal at school 1 in 2007-2008 stated that the teacher had not reached the outcomes of a Performance Review and a number of additional competence issues had been formally raised with her. Counsel submitted that the teacher's previous performance was not to be tested at this hearing and that it was accepted that the teacher was classified in the Expert Teacher class. This fact, on its own however, did not establish whether she was a competent teacher.

Witness 1

Witness 1 affirmed by phone that his witness statement dated June 2010 was true and correct and he did not wish to make any alterations. He stated that he was retired but had been a teacher, Principal and an Assistant Regional Director. He was the Acting Principal at the school for three months in 2009. He had no involvement in the recruitment of the teacher who had been appointed in the previous year. He said that the school was the result of an amalgamation between school 2 and school 3. A new administration block had been built between two existing buildings and there was approximately 100 metres between them.

Witness 1 said that in the first week of term one, 2009, there had been complaints from teachers and coordinators about the teacher's performance. He had gone to observe her classes and noticed a lack of supervision; the teacher sat with her laptop open at the front of the class talking toward the screen. She had shown no engagement with the students. The class he observed was a senior physics class which was composed of the cream of the school's students. Witness 1 had rebuked the class and told them to be more respectful to the teacher. He said nothing improved with the teacher's classes, no learning was taking place and students walked out of her class without any action from her. Witness 1 said he then examined the teacher's personnel file and discovered extensive information over a

number of years raising issues about the teacher's performance at school 1. He then observed the teacher in junior classes on a daily basis accompanied by another staff member. The same pattern of non-engagement was apparent.

Witness 1 said he was disappointed in the teacher's performance after she had been given a lot of support. He said that teacher 3 was the teacher's main mentor and she had been appointed at the latter's request. The support group for the teacher was comprised of excellent teachers and in his view the teacher was provided with excellent mentoring. However, after all the support she had been given, witness 1 could detect no improvement in the teacher's performance at all. Witness 1 said the support group teachers became increasingly frustrated by the teacher's effort and attitude and he said talking to her was disconcerting, he described it as "like talking to a pane of glass". He said that the decision to change the timetable so early in the school year was a difficult one but another teacher, teacher 4 had indicated interest in coming to the school and the unexpected retirement of another staff member allowed witness 1 to offer teacher 4 a position. As far as he was aware teacher 4 had not been an applicant for a position at the school the previous year. He said the negotiations to re-locate the teacher took a two to three week period. He then removed the teacher from her senior classes.

Witness 1 said that the teacher displayed various shortcomings as a teacher. Her desk in the maths/science area was empty and she appeared to keep all her resources in her car boot and everything was done on her laptop at home. His judgement was that she could prepare for a class on paper but that she had no skill with which to execute her lessons. He found her behaviour inexplicable and he said you could raise matters with her but there would be no acknowledgement that she understood the concerns that were raised. She would veer off on tangents unrelated to the matter under discussion and say that the students were going okay. Witness 1 said he could detect no sustained improvement after extensive support. The teacher took sick leave for what he assumed were family and health reasons towards the end of term. He said that the complaints were coming from students of the calibre of the School Council President's daughter who had high career aspirations. At a Year 7 function three sets of parents complained to him about the teacher. Witness 1 rejected the idea that teacher 4's appointment was some sort of a conspiracy as alleged by the teacher. He regarded the appointment as a stroke of good fortune for the school after the decision had been made to remove the teacher from senior classes.

Teacher 1

Teacher 1 said that that the witness statement dated 30 June 2010 was true and correct and she did not wish to make any alterations. Teacher 1 said she had been a teacher since 1972 and had taught at the school since 1977. She stated that she taught on the junior school site and was in her first year as the year 8 coordinator in charge of 157 students at the time she was asked to support the teacher. She had limited dealings with the teacher prior to undertaking a mentoring role. She said the teacher's denials that there were any issues she had to address in her teaching practice made it difficult to assist her. On 5 June 2010, a student left the teacher's class for a drink without having her diary entry completed and teacher 1 regarded this as an unusual occurrence. It was a cold day in

June so teacher 1 didn't regard it as a thirst issue. In any case, students at the school were not encouraged to leave classrooms.

On the same day four students were sent from the teacher's room which was unusual because teacher 1 said that at any one time there would only be approximately three students from the junior school waiting outside her office. She said that the teacher couldn't cope with the students, some of whom were testing and difficult. To assist the teacher one student was placed on a conduct card requiring him to have it signed at end of very period. Teacher 1 talked to the students about their behaviour. Teacher 1 said that in the course of teaching a class dealing with resilience a number of the better students raised the issue of their science class, including one student who wanted to blame himself for the class's behaviour, but teacher 1 believed his reaction was based on him being a new student from interstate who had been traumatised previously in an accident. Rather than allowing discussion on the teacher's behaviour, teacher 1 focussed on developing a strategy that students had to raise their hands in science class if they wished to ask questions. Teacher 1 said the students showed some empathy for the teacher when they behaved badly. Teacher 1 planned to discuss the strategy with the teacher.

Teacher 1 said that the teacher's heavy accent did create some difficulties for some students. Teacher 1 wasn't sure where the suggestion had come from that the teacher should record students in her class but it had not come from her. The recording of students by the teacher upset them considerably and they regarded it as an invasion of their privacy and it horrified them. One student was crying and others left the class to help her. Teacher 1 told the teacher that it was inappropriate to tape the students. Teacher 1 stated that the class on 7 August 2009 was chaotic, seven students were outside the class and several were in tears.

Teacher 1 said that the teacher's teaching style was inflexible and unsuited to year 8 who needed lots of activities. She said that she would routinely be prepared with five to six activities for a similar class. She said the students were demanding more practical activities. The teacher showed no improvement over the time she was supported. The teacher never attended teacher 1's class to observe despite being invited to do so. Teacher 1 said she was not comfortable being asked to mentor a teacher who she hardly knew and pointed out she was only really hearing the students' version of events. She said that the teacher operated at the lower end of expertise. She stated that the teacher rationalised her performance by either denying there was a problem or by saying it was the students' fault. Teacher 1 also told the Panel that students in the teacher's classes tended to just copy notes from the whiteboard.

Teacher 3

Teacher 3 confirmed that the statement she had signed on 10 June 2010 was true and correct and she did not wish to make any alterations. She had been a teacher at the school for twenty-six years and it had been her first school. She was currently a Leading Teacher of mathematics and science from years 7-12 and currently taught years 8, 11 & 12 mathematics. In June 2010 she was teaching junior mathematics and year 12 biology. She observed the teacher's physics class. She stated that the teacher was effusive in her desire to improve which initially teacher 3 took at face value. In time, she told the Panel,

she came to believe this was not sincere. The teacher had told her that she had had a Leading Teacher mentoring her in junior classes at school 1. Teacher 3 said she had been aware that the teacher had been shifted to junior classes. She said that the teacher did not react well to suggestions for improvement. She became less willing to have teacher 3 in class and didn't want to discuss her teaching plans, rather she wanted teacher 3 to simply validate them. Teacher 3 noted that her classes lacked differentiation and structure and that the teacher became increasingly defensive about her lesson plans which to her credit did show some improvement. Teacher 3 thought that the teacher believed that if the information was placed on the board then that was the lesson. She said that the teacher focussed very much on her lesson plans but it was other issues like classroom management that were the cause of complaints. She said that the teacher considered herself the victim after complaints were made.

Teacher 3 said that that general standards and expectations of students at the school were good. She said there was a defined student management structure and pink slips were used to alert coordinators to persistent, underlying problems rather than being taken into class in wads and handed out as a response to a particular problem. Teacher 3 said that the raising of hands was a general expectation but the teacher ignored students who did so. The teacher failed to seize on good student questions to expand their knowledge and understanding. Teacher 3 said that on 11 May 2009, the teacher was angry and gave lip-service only to the notion of improving her teaching. Teacher 3 refused the teacher's attempt to enlist her support against the Principal and the teacher became increasingly angry. The teacher did not go and observe other teachers' classes because teacher 3 thought she didn't think it was important.

Teacher 3 said that the teacher made an effort to increase the amount of practical work and moved around junior classes leading to some improvement in student behaviour. However she believed that the teacher couldn't relate to students and could not establish any common ground with them. Teacher 3 was never sure whether if the teacher was incapable of change or resistant. Teacher 3 said that in summary the teacher did not show any sustained progress and grew increasingly angry with staff. Her soft voice was not initially a problem for the teacher, but became so and the teacher experimented with using a microphone in class. Teacher 3 wondered if, due to English not being her first language, the teacher understood what was said to her. Teacher 3 said she became increasingly frustrated with the teacher who she felt was only giving lip-service to the ideas being suggested or the notion that she had to improve. She commented on the inordinate amount of time it took for the teacher to mark the roll. She stated that the teacher excluded less able students and that she couldn't reflect on her practice and blamed everyone else for her difficulties. She stated that in her view all her year 8 classes were poorly conducted. She noted that in the case of 8B they had lost 5 teachers due to ill-health and retirement and had become unsettled increasing the difficulty of teaching them. She told the Panel that students in the teacher's classes generally yelled out, wandered around and left class without permission.

The Assistant Principal

The Assistant Principal affirmed that her statement of 17 June 2010 was true and correct and she did not wish to make any alterations. She had been a teacher for more than thirty

years and the Assistant Principal at the school since 2008. The school had two campuses and the Assistant Principal had only fragmentary knowledge of the teacher when she was on the senior site, but when she moved to the junior site the Assistant Principal gained an overview of her. The teacher had year 7 classes and year 8 classes. The Assistant Principal said she thought at length how to help the teacher and tried to show respect for her as an individual and the Assistant Principal thought she had some success in assisting the teacher because of this approach. The Assistant Principal said that as a person who had experienced the European academic tradition and education she perhaps understood the teacher's need to be acknowledged as an expert in her field. The education the teacher had received with its emphasis on mastery of content also contributed, in the Assistant Principal's view, to a failure on the teacher's part to contextualise her teaching or to be flexible. She noted that the teacher appeared to be obsessed with validating her content. The Assistant Principal discussed neutral matters with the teacher to diffuse any tension. Her initial assessment of the teacher's problems was that she had a language difficulty, was a controlling speaker in conversation and was frequently distressed and angry. The Assistant Principal said she adopted the Expert Teacher standards as the standard she expected of the teacher who was initially very hostile to the support process.

The Assistant Principal said that when she entered the classes for mentoring purposes the teacher tended to focus on her rather than the class. The Assistant Principal noticed that she didn't move around the class, but rather wrote extensive notes on the whiteboard or referred students to a PowerPoint. Students appeared to move around the class freely. In her estimation the teacher didn't grasp that she needed to engage the students. The teacher was diligent in producing well planned sequences of work. She appeared to engage with a few students, generally the high achievers. Some students were engaged occasionally but then there was a group of completely disengaged students and the teacher did not understand that she had to engage with all students. The teacher seemed to have a conceptual lag in understanding and the Assistant Principal thought this may have been because she was processing in her first language. The teacher did not attend the series of observations that were organised for her and the Assistant Principal said that some of these included teachers who spoke quietly because it was believed that their approaches might be applicable for the teacher. The teacher stated that other teachers just taught the same as her and appeared to be unable to identify how other classrooms and teachers differed from her own. In the Assistant Principal's view there was too much focus on content in the teacher's teaching practice. The Assistant Principal said that the teacher failed to censure a student for having pornography on his phone, which she would have expected her to do.

The teacher became unwell during this process and was stressed, but wouldn't discuss matters with the Assistant Principal. She became emotional and withdrew from meetings. The Assistant Principal specifically tried to reassure her over time that the process was meant to be a supportive one. The Assistant Principal believed that at some meetings the teacher showed very little understanding of the welfare approach to students adopted by the school. The teacher was generally unwilling to engage in open dialogue. Occasionally she would show some signs of improvement but ultimately, the Assistant Principal believed, lacked the capacity to improve. To her credit the teacher had shown, on occasion, that she could provide more varied material, use technology in her classroom, reduce the amount of 'chalk and talk' but the Assistant Principal described these

improvements as superficial. When her classes deteriorated the teacher reverted to the teaching style the Assistant Principal believed was her default position. The Assistant Principal said that students understood the teacher's positive intentions but there was an underlying concern about her real thoughts.

The Assistant Principal said that her colleagues didn't really understand her and the teacher refused to engage with her colleagues. It appeared that the teacher had to discuss all educational issues with her husband and communication with the teacher was never comfortable and many conversations began only for the teacher to say that she would do the work at home. The Assistant Principal described her as enigmatic. She was inflexible in her approach and seemed to follow a scripted lesson from which she could not depart. The teacher appeared lost in class when the lesson didn't follow her script and she lacked the ability to vary her plans. She could be highly emotional and angry. The Assistant Principal said that the teacher appeared to have some sort of persecution complex and was alternately defensive then aggressive. She said that the teacher was obsessively private and left no footprint in the school. She had never met her husband. She felt the teacher's language skills were a major impediment in her teaching and new ideas agitated her. On the positive side she noted the teacher assisted recently arrived migrant senior students in her own time. Counsel Assisting related the 1999 New Zealand report on the teacher at the end of her teacher education course and the Assistant Principal agreed that it painted a completely different picture of the teacher and the skills that she had witnessed at the school. The Assistant Principal's final assessment was that the teacher had no capacity to change.

Teacher 2

Teacher 2 agreed that the statement she had made in June 2010 was true and correct and she did not wish to make any alterations. She had been a science teacher at the school since 2002. A clarification was made with regard to the fact there were two records of observations of the teacher. The Panel was referred to the second of these which had been updated and sent to the Principal at the time.

As the head of science teacher 2 said that her duties included curriculum development, management of the teams, administration of the budget, subject allocations and ensuring there was a degree of comfort with teachers and their teaching loads. In 2009 she taught Year 11 biology, Year 10 science and Year 7/8 science and mathematics. Teaching on both junior and senior sites required her to be well organised and she had a drop-down desk at the other campus. The teacher sat in a smaller room, but the openness of the staff rooms allowed staff to have lots of formal and informal meetings. Teacher 2 said it was her responsibility to ensure that the teacher had a copy of the curriculum to follow for each year level, had the appropriate textbooks, had a discipline plan and was provided with appropriate induction. She said that she had a professional relationship with the teacher until she was removed from the senior subjects. After this time she felt that the teacher became reluctant to accept any of her advice.

She said the teacher had difficulties with language and teacher 2 listened carefully to try and understand the teacher. The teacher was difficult to engage with, was unpleasant at times and became hostile if pressed. On one occasion the teacher pointed her finger in

anger at teacher 2. Teacher 2 said she had to repeat herself because she felt the teacher did not understand what she was saying on occasion. The teacher's curriculum plan didn't show the scope and sequence of her curriculum. At the beginning of the year she saw the teacher in the staffroom, but as time progressed she saw little of her. The teacher didn't seem to understand that Heinemann publishers in their outlines didn't include school assessed tasks which teachers were expected to develop in the light of their own experience and resources. The teacher had given a number of year 8 students 100% for a test, but their answers were incorrect. When questioned by teacher 2 about this the teacher told her that the students were young, they needed encouragement and praise and not to worry because she did it differently.

Teacher 2 told the Panel that the teacher's classes were rarely on task for a sustained period. She would demonstrate something to one student and present her back to the rest of the class and that this created student management problems. Teacher 2 acknowledged that the teacher had some difficult students, but teacher 2 assessed the teacher as performing like a student teacher. The teacher's classes showed no improvement in learning outcomes. Teacher 2 stated that she was given a lot of guidance, but didn't follow through, didn't give feedback to students and couldn't identify what needed to be done in her classroom. The teacher's initial involvement in the mentoring process was good but she then became unreceptive. Teacher 2 said she had no role in the teacher's appointment. She said that the teacher's punctuality became a significant issue. The teacher became a person who had to be tiptoed around because of her temper and emotional state. Teacher 2 said she never felt the she and the teacher made progress. She felt uncomfortable when the teacher related what had happened with the Principal. She said that the teacher began to use her car boot to store her teaching resources after she was removed from senior classes at about week three of term one 2009. She told the Panel that students in the teacher's classes didn't appear to understand when it was appropriate to ask questions. Teacher 2 said that she believed that the teacher's language difficulties led her to write on the board as a way of coping in class. She said the teacher had difficulty explaining science concepts like the difference between atoms and elements and she believed this was due to language difficulties. She said that the notes on the board were generally written at the beginning of class. She said that on one occasion the teacher had asked a laboratory assistant to deliver the experiment in class.

Witness 2

Witness 2 agreed that her signed statement of 7 June 2010 was true and correct and she did not wish to make any alterations. She had been a laboratory assistant at the school for five until 2010 and school 4 over 2011-12. She was completing her Bachelor of Applied Science. At the school she had been situated on the junior site in a laboratory next to the science room. Large windows allowed her to see into the adjacent classroom but she said that she wouldn't hear the noise level of a normal class. She said that she had demonstrated the hydrogen pop test for the teacher which was not something she would normally do. She described it as a very simple task but did so because the teacher said that her students didn't understand her. Witness 2 observed that it took the teacher a long time to start her lessons and on the day when she observed ten students outside the class she found this very unusual. She did not recall them ever doing a lot of work. She

believed that the teacher didn't command respect in the classroom and she also observed that the amount of work she left for her classes when she was absent was very brief. She did note however that she did not think the teacher's classroom was unsafe for students.

Witness 2 said she did not usually express her concerns about a teacher to coordinators but she had in the teacher's case. She had had good personal relationship with the teacher, who expressed gratitude for witness 2's help and she described as friendly and chatty and someone who always said hello.

The Acting Principal

The Acting Principal stated that he was the current Principal of school 5 and agreed that the statement he had signed on 13 July 2010 was true and correct and he did not wish to make any alterations. He had been a teacher for 22 years and a Principal for nine years. In 2009 he was the Acting Principal at the school after witness 1. In term three of that year he observed the teacher's classes for an extended period of time. He said that many students in her classes were off-task for most of the time. There was a degree of anxiety amongst the students. He said that students could not explain the tasks they had been given. He said that he had informal discussions with the teacher outside and after the classes. She admitted that she had recorded her classes. The Acting Principal found the teacher difficult to deal with and felt she lacked an understanding of what was being said. He said her classes lacked purpose because she didn't explicitly explain the purpose and nature of the task. She adopted a didactic approach and showed no engagement with the wide range of students. Competency including management issues had been raised with her by the previous Principal, witness 1 and the teacher could not have been given more support over a period of time. In his view the teacher did attempt to implement some strategies but her problems were too deep. After the Acting Principal wrote to the teacher stating that her performance continued to be unsatisfactory and he invited a submission from her before writing to the employer, the teacher submitted her resignation effective from 20 August 2009. After receiving the letter the Acting Principal saw the teacher in a corridor and asked after her welfare. The teacher said that she had wanted to see how far she could push the Acting Principal who stated he was dumbfounded by the remark.

In her closing submission Counsel Assisting said that these allegations referred to matters prior to amendments to the legislation in 2011 and therefore the Panel should be guided by the earlier legislation. She submitted that the Notice of Formal Hearing contained three allegations which have particulars drawn from witness statements. She noted that the teacher does not have to respond to matters at school 1 as it was not part of the allegations, however that the Panel could rely on letters from school 1 to show the teacher's claim that she had showed consistent career progression could not be substantiated. As shown in the letters tendered a range of problems had occurred for the teacher at school 1. Counsel Assisting stated that this evidence could be considered in the light of context. Counsel questioned whether the teacher's claim that she had a mentor in her class at school 1 could be relied on.

Counsel referred the Panel to new common law with regard to according natural justice to those who do not appear and who do not admit to the allegations. In *Pharmacy Board of Australia v Kham* (2012) VCAT 1316 Deputy President Dwyer, member Cogley,

Member Gysslink summarised the need to accord natural justice with regard to the decision in *Dewan v Medical Board of Australia* (2011) VSC 588 where the court considered it appropriate to have a two phase process in a hearing where the conduct alleged is not admitted. This involves making a finding on the facts and then submitting this to the non-appearing party to provide an opportunity for response. The Panel would then consider any submissions in the making of make a determination as to penalty. As the teacher has denied the allegations Counsel Assisting recommended to the Panel that they first make a decision as to whether they find the allegations substantiated then invite a submission from the teacher if the allegations are made out. The teacher's non-attendance means that she will also be able to read the Panel's findings as to the allegations before responding as to penalty. Counsel further advised that any submission by the teacher should go to penalty not a re-examination of the allegations.

Counsel Assisting submitted that the witness statements should be accorded appropriate weight as being honest observations, made over a significant period of time. She highlighted that the witness statements all mentioned that the teacher had problems with language and lacked a certain capacity to understand and communicate with others. She argued, however, that it was not her accent that affected her management skills, asserting that evidence presented by the witnesses showed that the more distressed the teacher became, the less she was able to communicate. When she was not distressed, counsel noted that she did not provide the students with explanations. She submitted that experienced teachers did their best to give the teacher support. She drew attention to the fact that so seriously were the concerns viewed by the school that within the first three weeks of term 1 the Principal had acted to remove the teacher from her senior classes. Counsel submitted that the school and teachers could not have done any more for the teacher. She said that the observations of the Acting Principal confirmed previous observations by teachers and the Principal and these were compelling. She said no weight should be attached to the teacher's final comment to the Acting Principal as it did not go to the allegations.

Counsel reiterated that in a letter to the teacher dated 21 August 2012 from the Institute she was offered advice and assistance which she did not take up. Counsel submitted that there was no prejudice apparent in the witness statements against the teacher, but rather they pointed to what all the witnesses affirmed in their oral evidence that her teaching performance was deficient in fundamental ways and the problems were so deep seated that they could not be rectified.

DISCUSSION OF THE EVIDENCE

The Panel found each witness's written and oral statements consistent and in combination provided strong evidence to support each of the allegations. The Panel respected the teacher's right not to appear, but her written submissions did not negate the overwhelming body of evidence against her. The witnesses were respected professionals, some of many years standing, and their detailed observations were insightful and perceptive. The support group was comprised of experienced teachers who made a commitment to support the teacher and the record of their observations, suggested strategies and belief in her ability to improve was outlined in page after page

of evidence. It was no fault of theirs that the teacher failed to reach a satisfactory level of competence. It was apparent to the Panel that the commitment of the school and its teachers to assist and support the teacher was a very real one and involved considerable time, effort and inconvenience on the teachers' part to help her amongst their other duties. It is no reflection on them that after a sustained effort to assist the teacher they became frustrated when, after some initial attempts at improvement, she either denied there was a problem, deliberately rejected their suggestions or said she was interested in improving but then didn't act on it.

In the teacher's written submission she claimed that the allegations were variously false, malicious and designed to discredit her. The Panel could find no evidence to support these claims. The teacher felt shocked, cheated and manipulated when she was removed from senior classes and attributed the decision to a conspiracy to replace her with another teacher's partner. The Panel has no doubt that the decision shocked the teacher greatly and led her to disengage even further from her colleagues, but it is impossible to find even the smallest acknowledgement in the teacher's written submissions that there were areas of her teaching practice she needed to improve on. The teacher saw herself as the victim and this justified, in her mind, her rejection of any assistance. The Panel thought that the removal of a teacher from senior classes so early in the year indicated the depth of the Principal's concerns. The decision to change teacher timetables three weeks into term one, 2009 would only have been made after much thought and appreciation of the difficulties this decision would create for students and teachers and at a time when the emphasis in most schools is to develop a culture of working hard and focus on collaboration.

The support group identified a number of aspects of the teacher's performance that collectively lead to a finding of serious incompetence. The Panel identified these as an inability to manage her classes, an inability to engage her students, issues of proper assessment, her relations with her colleagues and her communication problems. The first of these is an inability to show appropriate classroom management techniques. Evidence was provided of students leaving the room at different times without her challenging them. Some students could be standing outside the classroom, sometimes confused and distressed or in other places not known in a way which violated the teacher's duty of care to all the students in her class. The lack of a clear behaviour management plan, despite the school clearly having one that had been distributed to all staff, meant that students were arbitrarily removed from class without warning, while other students who were also breaking the rules, remained. The number of students removed sometimes exceeded what was acceptable. The teacher did not appear to either explain the rules of behaviour to her students, have a graduated series of warnings, e.g. moving students to another seat, or remind the students at particular times about the rules. Students were also observed to have been conducting experiments without protective clothing. The teacher referred in her written submissions specifically to her use of appropriate management techniques, but these were expressed in very general terms. The fact that she did not outline any practical strategies illustrates the point made by all observers of her classrooms that the teacher was simply incapable of managing all her students.

A closely related problem for the teacher was her inability to communicate with and engage all of her students. The teacher failed to explicitly explain to students what the

purpose and task for the class was and the Panel believed that this was one of the contributing factors to her lack of control in the classroom. The results of this lack of clarity for students were that they became disruptive, walked out or simply chatted away to each other as if the teacher wasn't in the room. Another source of disengagement for students was the teacher's reliance on filling the whiteboard with notes or showing a PowerPoint. There was some evidence that the teacher increased the number of practical activities for younger students during the observation and support period, but this was not sustained and reflected a lack of understanding of young students that she should have possessed. Sometimes in a classroom there will be a period where despite a teacher's best efforts to make themselves clear, students still don't grasp something. It is at this point where teachers provide further guidance and instruction to re-engage students and get them on task. The teacher did not appear to be able to do this. The evidence was that the teacher would talk to some students while the larger number of students simply sat around without clear guidance. The Panel was of the view that this was an indicator of the teacher's serious incompetence in that her classes drifted without appropriate guidance from her. The teacher claimed in her written submission that she structured her classes according to Blooms 6 Level Taxonomy and outlined the stages she followed in each class. The evidence from observers of her classes, however, was that although she may have prepared a plan which focussed very well on content, her execution of the steps she claimed to be following for example reviewing prior knowledge, presenting a lesson outline, simply did not occur. The Panel accepted the evidence of a number of experienced teachers that the teacher did not engage students.

The teacher's assessment methods lacked rigour and evidence was provided that she gave full marks for incorrect answers on the basis that this was the way to encourage students. In the teacher's written submission she provided detailed evidence of appropriate assessment strategies but no evidence that these were applied in her practical assessments of students. The teacher denied that any of her assessment processes were flawed.

The Panel came to the view that the teacher did not take advantage of the strong support she was given. She went to very few of the observations organised for her and they, the evidence suggests had been organised carefully and were tailored to her needs. There was some evidence that the teacher tried to increase the practical activities for younger students but was unable to work this approach into her regular routines in a sustained way. There are a number of ways in which the teacher's failure to do so can be characterised, but lack of assistance or support is not one of them. The teacher's failure to be able to reach a satisfactory level of competence and any underlying causes were the subject of considerable conjecture but her silence meant that the Panel could not assist her with further guidance. The teacher continued to deny the accusations and this indicated an almost complete lack of insight on her part. Even experienced teachers will acknowledge that there are areas of their teaching practice that can always be improved but the teacher was not of a similar belief. The Panel found it impossible to dismiss the weight of experienced professionals of many years standing, who gave evidence under oath and who all painted the same detailed picture of the teacher's serious incompetence. It did not help the teacher's case that her claim to have experienced consistent career progression at school 1 was found to be untrue, or that the appointment of teacher 4 as a conspiracy lacked any substance.

It was to the teacher's credit that she had assisted some students in her own time and that she had made some attempts to include practical activities in junior science classes. Her attempts to use a microphone in class were also laudable although the Panel had no evidence how long this continued. The problem for the teacher is that even when witnesses pointed out some improvements in her teaching they then said that they were not sustained. They all regarded the teacher as seriously incompetent and incapable of improvement. On the basis of the evidence presented, the Panel found that the teacher was guilty of serious incompetence.

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 teacher's serious incompetence had been of a continuing or persistent nature both at school 1 and the school. The Panel could see little evidence that the teacher was capable, despite much support from a range of experienced teachers, of improvement. The Panel had strong doubts about how the teacher would perform in a classroom in the future. The evidence from this same group of teachers as well as the two Principals was that the teacher's problems were too deep seated and her unwillingness to accept there was a problem meant that it was unlikely, in the Panel's view, that the teacher could change. Her lack of insight was troubling for the Panel who could find no evidence to support a view that she might change. The reasons for her lack of flexibility in her approach and her unwillingness to change despite clear warnings that she had to if she wished to retain her teaching position were and remain a mystery to the Panel.

It was apparent to the Panel that the teacher did not treat her colleagues with courtesy and respect. She did not engage in professional conversations with a sense of openness and honesty but instead appeared to the Panel to lack honesty in dealing with her colleagues. Her anger meant that important discussions and constructive debate could not take place and all her colleagues talked of trying to avoid her temper and anger. She sometimes took on her colleague's suggestions but generally appeared not to value them or said that she would implement them and did nothing. She was not able to collaborate with her colleagues but only sought to have her own anachronistic teaching methods validated. She did not share ideas or appear to respect different approaches to teaching. On the question of whether the teacher's whole approach to teaching was profoundly and irretrievably flawed the Panel came to the view that, on balance, it was. The Panel did not have an opportunity to assess the teacher on the day of the hearing but believes, in the light of the evidence presented that she is not fit to teach. The Panel would have appreciated the opportunity to hear from the teacher.

FINDINGS

Pursuant to section 2.6.46 of the *Education and Training Reform Act 2006*, on 10 October 2012 the Panel found the teacher guilty of serious incompetence and not fit to teach.

DETERMINATION

The findings of the Panel were sent to the teacher and she was invited to make a further submission as to penalty. The teacher did not make any further submissions.

On 30 November 2012, the Panel decided to cancel the registration of the teacher.



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GARRY SALISBURY, CHAIRPERSON



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per:
ANNE FARRELLY, REGISTERED TEACHER



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per:
PAUL WILHELM, PANEL MEMBER