

VICTORIAN INSTITUTE OF TEACHING

DECISION AND REASONS OF THE FORMAL HEARING

NUMBER: 600496

Hearing Number 0355

REGISTERED TEACHER: Eleanor YORKE

PANEL MEMBERS:

Anthony Sheumack, Chairperson

Garry Salisbury, Registered Teacher

Jessica Adams, Registered Teacher

ATTENDANCE:

Ms Yorke attended the Formal Hearing and was represented by Mr Stoller (BARRISTER), with Ms Jenkins (SOLICITOR) Instructing Solicitor on behalf of the teacher.

Ms Papadinas (BARRISTER), Counsel Assisting with Ms Bowles (VIT SOLICITOR), Instructing Solicitor on behalf of the Victorian Institute of Teaching.

DATE OF HEARING:

24 March 2025

DATE OF DECISION:

24 March 2025

DETERMINATION UNDER SECTION 2.6.46(2) OF THE *EDUCATION AND TRAINING REFORM ACT 2006*:

On 24TH MARCH 2025 the Panel decided to cancel the registration of the teacher from 24 March 2025 and impose a disqualification period of 3 years from 24 March 2025 to 24 March 2028.

REASONS

BACKGROUND

The Teacher has been a registered teacher with the Victorian Institute of Teaching (the Institute) since 12 January 2017.

On 31 May 2023, the School provided the Institute with information concerning allegations of alleged misconduct/serious misconduct of the Teacher. On 5 June 2023, the Teacher's employment at the School was subsequently terminated.

On 14 June 2023, the Chief Executive Officer of the Institute decided to exercise its interim suspension powers pursuant to section 2.6.28 of the Education and Training Reform Act 2006 (Vic) (the Act) and suspended the Teacher's teacher registration on an interim basis.

On 9 October 2024, following an investigation the Institute's Professional Conduct and Registration Suitability Committee referred the investigation to a Formal Hearing.

A Notice of Formal Hearing and formal hearing book was served on the Teacher via her legal representative on 24 January 2025.

THE ALLEGATIONS

The allegations of misconduct or serious misconduct as set out in the Notice of Formal Hearing are:

Allegation 1 – Violation of professional relationship

Between in or around August 2020 and in or around October 2020, whilst registered as a teacher and employed at the School, the Teacher engaged in misconduct (within the meaning of paragraph (a) of the definition of misconduct in s 2.6.1 of the Education and Training Reform Act 2006 (Vic) or serious misconduct in that she violated a professional relationship with the student by holding conversations of a personal nature or had contact with the

student via written/electronic means (including email, letters, telephone, text messages or chat lines) without a valid context.

Allegation 2 – Compromised professional relationship

Between in or around July 2021 and in or around December 2021, the Teacher whilst registered as a teacher employed at the School, engaged in misconduct (within the meaning of paragraph (a) of the definition of misconduct in s 2.6.1 of the Education and Training Reform Act 2006 (Vic)) or serious misconduct in that she compromised a professional relationship with a former student by having a sexualised relationship with the student within two (2) years of the student completing their senior secondary school or equivalent.

Allegation 3 – Fitness to teach

Between the periods of in or around August 2020 and in or around December 2020 and in or around July 2021 and in or around December 2021, the Teacher engaged in a pattern of conduct as detailed in Allegations 1 and 2 which demonstrates that she is not fit to teach.

THE EVIDENCE

The Panel noted the agreed statement of facts contained in the hearing book.

Mr Stoller on behalf of the Teacher indicated that his client accepted the allegations, and the Panel could treat them as having been established.

Further Mr Stoller indicated that the Teacher accepted that the allegations constituted serious misconduct and that the Teacher was not currently fit to teach. He said that this position was consistent with his client's acceptance of responsibility from the beginning.

He also said that while there may have been arguments the Teacher could have made in respect to elements of the allegations she had chosen not to contest any and accept full responsibility.

Mr Stoller also indicated that the Teacher accepted that it was appropriate for her registration to be cancelled. He indicated however that the Panel would be

urged to consider that cancellation by itself was a sufficient sanction in this matter. He said that the Institute retained sufficient powers to prevent the re-registration of the Teacher in the immediate to longer term.

Mr Stoller called the teacher as a witness. The Teacher provided evidence of her education and teaching experience. She commenced her teaching career at the School in 2017. She undertook full VIT registration in 2018. She explained to the Panel that being a teacher was a very large part of her life and identity. She had been offered rapid promotion into a variety of coordination and leading roles. She was appointed Head of House and digital learning coach. She said that during the COVID lockdowns in 2020 she was working 70-hour weeks and working closely with her students in an online teaching environment. She experienced feelings of isolation and loneliness during this time. The Teacher stated that in 2022 she sought medical assistance.

The Teacher identified that there is a power imbalance between teacher and student and admitted she had subsequently breached the Code of Conduct. She was aware of the change to the Code in 2021 regarding the formation of a sexual relationship with a student within 2 years of their graduation. The Teacher admitted that the messages between her and the student (detailed in the Hearing Book) were inappropriate but said that she did not consider them to amount to emotional intimacy. She claimed that there was no romantic or sexual motivation in the messaging rather it was an inappropriate friendship. The Teacher admitted that she found it hard to maintain balance in her teaching.

She stated that following this issue and her absence from teaching, she had no intention of returning to teaching as she regarded herself as being unfit to teach. She had concluded that teaching may not be a suitable career for her. The Teacher took responsibility for her actions that led to the consequent investigations, the ending of her employment, media reports and the formal hearing. She said that she had anticipated a response to her serious misconduct once it had been revealed and didn't place blame on those reporting or investigating her conduct. She said that she considered that she was rightly suspended and subsequently dismissed by the school.

DISCUSSION OF THE EVIDENCE AND PANEL FINDINGS

There was agreement between the parties that each of the allegations outlined in the Hearing Book were substantiated. The Teacher accepted that the allegations amounted to serious misconduct and that her registration should be cancelled.

Counsel for the Teacher suggested that the Panel should accept as mitigating factors, the Teacher's frank admissions and her honesty pertaining to the investigations.

The Panel considered, however, that despite the apparent honesty of the Teacher and her perception of new insights she had gained, during her evidence, she did wilfully engage in serious misconduct that contravened the Code of Conduct in significant manner and thus, did not, in the panel's estimation, reduce culpability.

The Act defines misconduct as conduct which is of a lesser standard than a member of the public or members of the teaching profession are entitled to expect from a reasonably proficient teacher.

While the phrase "serious misconduct" is not defined in the Act some guidance can be obtained in decided cases. The phrase serious misconduct was previously considered in *Re Parr and Nurses Board of Victoria*⁸ and cited in *Davidson v Victorian Institute of Teaching*⁹ where the Tribunal said that for misconduct to be serious it had to be more than trivial, or of momentary effect only at the time of the commission or omission by which the conduct was so defined. It must be a departure, in a substantial manner, from the standards which might be reasonably expected of a registered nurse. The departure from such standards must be blameworthy and deserving of more than passing censure. Furthermore, Harbison J in *Davidson* alludes to the fact that a teacher is in a position of trust.

In *Davidson* the Tribunal said *"The teacher must maintain a professional detachment from a student. Their role cannot be that of a parent. Further, they cannot be the "best friend" of adolescent girls (or boys), for that matter."*

The Panel considered the Teacher's conduct demonstrated a serious departure from the expected conduct of a teacher. The Teacher described her own

behaviour in this way and accepted that that her behaviour did amount to serious misconduct.

The Panel found that the Teacher's assertion that the online message exchanges did not amount to emotional intimacy could not be supported by an objective assessment of those communications. The Panel considered that the emails show an increased emotional bonding developing through the extensive number of messages. The Panel was concerned that the Teacher continued to demonstrate a failure to understand that the nature and content of the exchanges developed into personal and intimate conversations. There were also increasingly frequent references to taking the Teacher's relationship with the student to a new level once the student had completed year 12. The language of these messages suggested that the Teacher and the student colluded in being secretive.

In the Panel's judgement there was a clear link between the increasingly personal messages and the later sexual relationship.

Counsel for the Teacher submitted that no causal link could be made between the messaging with the student and the sexual relationship that developed when the student graduated. The Panel disagreed, finding ample demonstration of that link.

The Panel noted that the Teachers Registration Board, Tasmania (2018) published *Professional Boundaries: Guidelines for Tasmanian Teachers*. In that publication it was stated that:

Romantic/sexual relationships with recent former students may breach teacher-student professional boundaries. Where there is a reasonable belief that the emotional intimacy of the relationship developed while the teacher-student relationship existed, a judgement that the teacher abused their position is likely.

The Panel found the Board's comments apposite in this matter.

The Teacher failed to act on the principle that as a teacher she was in a unique position of influence and trust that should not have been compromised. She did not adhere to the further principle that there are boundaries and limits to relationships with learners. She did not appear to consider that the student

might have had vulnerabilities which would have been protected by appropriate boundaries. On several occasions the Teacher considered imposing boundaries on the relationship but lacked the strength of character or judgement to do so. This relationship occurred despite the Teacher being aware of the clear warnings against violating professional relationships with students in the Victorian Institute of Teachers Code of Conduct.

Further to that, the Victorian Institute of Teachers Code of Conduct was amended on 12 July 2021 to forbid sexual relationships between teachers and students until two years after the student left school.

The Teacher discussed this amendment of the Code with the student and then chose to ignore it. This deliberate rejection of professional standards by a teacher whose skills and talents had led to rapid promotion was one for which the Panel could find no justification nor was there any satisfactory explanation. The public has a right to believe that their children are protected, and the Teacher's behaviour has the potential to undermine community confidence in teachers and schools.

The Teacher failed to understand that the imbalance of power between her and the student did not evaporate at the end of school. In the Teachers Registration Board, Tasmania's (2018) publication mentioned above, it is stated:

A significant factor in teacher-student relationships is the difference in power and authority between the two parties and the usually high level of trust the student and their family places in the teacher. These differences do not suddenly disappear at a specific point in time. They linger as an imbalance between the two individuals and as a potential impediment to their capacity to make decisions in their own and others' best interests. Consequently, a teacher who enters into a romantic/sexual relationship with a former student cannot assume that they will be protected from disciplinary action by claiming a relationship began only after the school term concluded or after final exams finished. Teachers should be wary of entering such a relationship with any young adult who was formerly a student of theirs, particularly in the early years after the cessation of the teacher-student relationship.

The Teacher told the Panel that she was not fit to teach. The Act (Section 2.6.1) defines the term "fit to teach", as whether the character, reputation and

conduct of a person are such that the person should be allowed to teach in a school.

The Panel asked the Teacher what she understood by the phrase, 'power imbalance' and she said that she understood that the power imbalance between a teacher and a student required that professional boundaries and distance be respected and adhered to. The Teacher was asked whether she could be trusted again with students and whether this pattern of serious misconduct would ever be repeated. She said that she found it hard to maintain balance in her teaching which the Panel took to mean that the Teacher continued to struggle to understand or adhere to professional boundaries when teaching. The Teacher's admission's that her own ability to maintain balance in a teaching career would require support was concerning to the Panel.

The Panel considered that the Teacher's admitted serious misconduct was not a one-off event but occurred over a period of years changing in nature from professional interactions into personal, intimate discussions and culminating in a sexual relationship.

The teacher was the only witness called. There were no character references, medical or psychological/psychiatric reports tendered to assist the Panel in assessing the Teacher's possibilities of rehabilitation.

The Teacher was firm in her view that she would never return to teaching.

The Panel considered previous VIT Disciplinary Hearing Decisions

- * Victorian Institute of Teaching v MDR: Decision No. 131048
- * Victorian Institute of Teaching v Michale McIntyre: Decision No.4412 & 10097
- * Victorian Institute of Teaching v Ngan Nguyen: Decision No.0349
- * Victorian Institute of Teaching v Jamie Lee Mitchell: Decision No.0343

In the matter of MDR the Formal Hearing Panel stated;

"The teacher was an adult with power and training to guide their actions and it was their professional responsibility to do so. The very reason professional boundaries are in place is to protect young people as they

develop, and the teacher's behaviour is an abuse of the power they were entrusted with.

In the matter of Ngan Nguyen the Formal Hearing Panel stated:

The sanctions imposed by the panel need to be sufficient to give the public confidence in the Institute's role in protection of the public and especially in ensuring the wellbeing and safety of children and community expectations of the conduct of teachers. They also need to provide a sign to the profession of the importance of boundaries and of teachers' professional and personal conduct.

In the matter of Jamie Lee Mitchell, the Formal Hearing Panel stated:

"The Panel concluded that this escalation of behaviour, noting that the teacher and the student had also discussed that it was wrong, amounted to a pattern of conduct. It is the opinion of the Panel that a proficient teacher in a leadership position in a school who is cognisant of the Code of Conduct would have awareness and the capacity for self-critical reflection to recognise when the boundaries of a professional relationship were being compromised. The Panel concluded that the teacher did not act in the student's best interest at any stage in the relationship, in the knowledge that professional boundaries were breached, and chose to progress the relationship for personal gratification.

The Panel found that these decisions set out important principles for assessing whether the Teacher's behaviour was unacceptable, improper and blameworthy and warranted admonition, disapproval and condemnation. Boundaries are put in place to allow young people to develop, knowing that they are protected by adults who will exercise their power and authority guided by the principles of their professional obligations.

In the matter of Davidson referred to earlier, the Tribunal point out that general deterrence and community protection is of vital importance in protecting and ensuring a child's wellbeing and safety:

"...the public interest is also of great importance in matters relating to student-teacher relationships. Parents have a right to expect that teachers will act with scrupulous integrity towards their children. Parents have minimal opportunity to scrutinise these relationships. Parents must encourage their children to obey their teachers and hold them in high

regard. Teachers must not take improper advantage of the trust of parents or of students. Teachers who abuse their position need to be dealt with firmly to signal to teachers, parents and the community that high standards will be maintained.

The Panel noted that the sanctions imposed in the above cases ranged from suspension with conditions to cancellation and disqualification for 3-4 years with a backdated clause in some cases.

The Panel found that while the Teacher showed some understanding, insight and remorse for her actions, it was not convinced that the Teacher had a clear view of her professional responsibilities or the ability/willingness to follow them.

In a particular case, a Panel may consider outlining conditions for re-entry to the teaching profession at some point in the future but the Teacher's vow not to return to teaching and the lack of any supporting medical testimony did not make this a feasible option in this matter.

It was agreed that serious misconduct had occurred, and that the Teacher was unfit to teach. The area for discussion was as to whether a period of disqualification needs to occur given the period of interim suspension for the last 22 months.

Counsel for the Institute submitted that the appropriate determination should be cancellation of the teacher's registration with a disqualification period of three years.

Council for VIT argued there needed to be a period of 3-year disqualification and left it open to the Panel whether any of this suspension should be backdated.

The Counsel for the teacher proposed that the circumstances surrounding the Teacher's suspension, including the extensions to this suspension since June 2023, alongside the reporting from both the school and the media was sufficient general deterrent.

The Counsel for the teacher proposed cancellation of registration with no period of disqualification, asserting that the power in relation to a teacher's registration remains with the Institute.

Determination

The Panel found the Teacher's conduct was a serious departure from the professional conduct expected of a teacher. Given that there was agreement that all allegations were substantiated, the Panel decided that the protection of children, the message of general deterrence to others in the teaching profession and community expectations about trust and respect for the teaching profession required a strong sanction. The Teacher's serious misconduct warranted strong condemnation.

The Panel determined that the Teacher's registration be cancelled and that a 3-year disqualification period apply, commencing from the date of the decision.



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ANTHONY SHEUMACK, CHAIRPERSON



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per:
GARRY SALISBURY, REGISTERED TEACHER



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per:
JESSICA ADAMS, REGISTERED TEACHER