



OmbudsmanSA

Report

Full investigation - *Ombudsman Act 1972*

Complainant	Name withheld from publication
Government Department	Department for Education and Child Development
Ombudsman reference	2013/11077
Department reference	CE2013/05345; 2014/00115
Date complaint received	21 November 2013
Issues	<ol style="list-style-type: none">1. Whether the department failed to properly manage the alleged sexual harassment, intimidation and bullying of a student2. Whether the department failed to lodge mandatory notifications under section 11(1) of the <i>Children's Protection Act 1993</i>3. Whether the department failed to declare a conflict of interest in relation to the appointment of a case manager for the student4. Whether the department failed to properly manage the complainant's complaint5. Whether the school principal made improper comments about a student

Jurisdiction

The complaint is within the jurisdiction of the Ombudsman under the *Ombudsman Act 1972*.

In order to protect the identities of the students involved in this matter I have decided not to publish the name of the complainant.

I advised the complainant in a letter dated 26 November 2013 that I would investigate the issues listed above. By email dated 1 December 2013 she confirmed that I had correctly understood these issues.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking further information and documents from her
- seeking a response from the department

- considering the relevant departmental policies, and the departmental records listed in Attachment 1
- considering the materials supplied by the complainant
- considering section 11 of the *Children's Protection Act 1993*
- preparing a provisional report and sending it to the parties for comment
- considering the parties' responses
- preparing this final report.

Responses to my provisional report

The department advised me by letter dated 31 January 2014 that it had no comment to make in relation to my provisional report.

The complainant responded by emails dated 16 January 2014 (3 emails) and 17 January 2014 (4 emails). I briefly summarise the main points she made in those emails, which were voluminous, as follows:

- whilst she can see how I reached my provisional findings, she does not agree with them
- she commented at length on the actions, professionalism and relationships of the counsellors and others involved in dealing with the matter. She considers that they demonstrate the operation of a 'clique' within the school
- she believes that my 'assessments and findings only work in a healthy dynamic, typically found in most normal schools ... but not the narcissistic (sic) dysfunctional and stockholm (sic) syndrome kind that is offered to the community here'
- she felt that she 'was not properly kept informed and that [she] was told certain things would be happening and they never did'
- she provided a copy of an email to the principal dated 13 June 2013 which provided details of her daughter's psychologist
- she has requested copies of departmental meeting and case notes relevant to the matter
- she would be prepared to sign a statutory declaration as to the truth of her experiences
- she believes that no one is being held accountable for 'their individualized non professional coercion (sic) [which] damages other students mental health'
- she stated that her views are supported by her daughter's former counsellor at the Child Adolescent Mental Health Service (CAMHS), Ms Beth Tucker
- the restorative meeting should not have proceeded on the same day as her daughter's work experience placement
- the assault on her son was a criminal act which should have been reported to police
- in conducting his investigation, the principal should have 'taken the list of contacts he was given and written formal letters to each of them, submitting confidentiality release of information papers and a request for a suitable time to discuss the matters'.

I have considered the complainant's responses, and have amended my report as I consider appropriate in light of them. However, they have not changed my substantive views about this complaint.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be

upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Background

1. This complaint arises from an incident in which the complainant's 16 year old daughter (who I shall refer to as **student A**) was allegedly sexually harassed, intimidated and bullied by another student (who I shall refer to as **student X**) at Millicent High School (**the high school**).
2. The department has advised me that the incident occurred on 14 March 2013, and involved student X calling student A 'Crayola', apparently in reference to her use of make-up; making a comment about her bottom; and flicking a piece of card at her, hitting her back and leaving a bruise (**the incident**).³ The complainant has described the incident as follows:

Yesterday [student A] was putting away her art in the store cupboard when [student X] came up behind her and stabbed her near the spine with a sharp object that caused lasting pain hours after and which left a bruise today.

He also targeted her in the classroom with words of sexual harassment.
3. Student A was enrolled in the high school's Flexible Learning Options Program (**the FLO**), a program that promotes a more flexible approach for supporting successful engagement of young people most at risk of disengaging with learning. At the time of the incident, she attended the Millicent Community Learning Centre campus (**the MCLC**). The department has advised me that student A 'was unenrolled from the school on 22 July 2013'.⁴
4. In 2012, student A's case worker at MCLC was Ms Amy Hateley. I understand that Ms Hateley is a cousin of student A's boyfriend. Following the complainant expressing concern about the matter, Ms Kym Gallucio took over as student A's case worker at the beginning of 2013.
5. The complainant alleges that:
 - the department did not properly manage the consequences of the incident. In particular, she alleges that the department through its officer Ms Sandy Hamilton (the FLO coordinator and a teacher at the high school) did not properly conduct what the complainant describes as 'an unauthorised restorative practice meeting' (**the restorative meeting**); and that this meeting was in breach of a care plan provided for student A by her general practitioner
 - the department failed to lodge mandatory notifications under section 11(1) of the Children's Protection Act in respect of the incident, and an alleged assault on her son (who I shall refer to as **student B**) who was at that time in year 9 at the school
 - the department through Ms Hamilton wrongly appointed Ms Hateley to handle student A's case in 2012, and failed to declare a conflict of interest in relation to this appointment

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

³ Notes of a meeting between the complainant, student A and the principal, 5 June 2013, p2.

⁴ Letter to me from the Acting Chief Executive, 7 January 2014.

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- the department through the school principal Mr John Shelton did not properly handle her complaints about the above issues
 - the school principal made an improper comment to student B about her.
6. The restorative meeting occurred on 22 March 2013 without the complainant being present. It involved Ms Hamilton, student A, student X, and their respective case workers.
 7. It appears that at some time on 22 March 2013 after the restorative meeting, student A self-harmed. She was able to attend her work experience placement at 4pm on the same day, but it is not clear from the information available to me whether this occurred before or after the self-harm incident. The department has advised that the school was not aware of the self-harm occurring until the matter was raised in an email from the complainant, which was received by the principal and others on 7 May 2013.
 8. Following some email and telephone exchanges, the principal met with the complainant and student A on 5 June 2013 about the complainant's concerns. It appears from the notes of that meeting that the complainant's description of what occurred at the restorative meeting differed from what the principal had been told. The principal went away to seek some clarification about the issues.
 9. The principal met with the complainant and student A again on 13 June 2013, this time in company with student A's case worker at MCLC Ms Gallucio. According to the notes of that meeting, Ms Gallucio advised those present that she had suggested that the restorative meeting should be held; that she felt that it went well; and that she felt student A had been strengthened as a result.
 10. The notes also contain the following passage:

[The complainant] talked about how she was believed she (sic) 'banned from that meeting' by [Ms Hamilton] as it would be unfair on [student X] at which [Ms Gallucio] added she knew nothing about. [The complainant] said she wanted to be in the room (mtg) for [student A], not to say anything but to be in there to support her, she was scared that what happened, would happen.
 11. The principal investigated the complainant's claims that student A was bullied, victimised and abused by Ms Hamilton in arranging the restorative meeting. He apparently interviewed a number of people as part of his investigation, including Ms Gallucio and staff of the MCLC; and commenced drafting a report outlining the results of the investigation. However, it does not appear that the report was ever completed. The draft report suggests that the principal found no evidence that student A had been mistreated by Ms Hamilton in conducting the restorative meeting.
 12. The department notes that the principal conducted a psychological health survey of MCLC staff towards the end of 2013. The survey results provided positive feedback from staff members towards Ms Hamilton's leadership, and showed no evidence that Ms Hamilton was ever intimidating or controlling of staff. It notes also that an independent review of the management of the MCLC was undertaken by Mr Troy Bell, Acting Manager of the centre, whilst Ms Hamilton was on long service leave. Mr Bell found no evidence of incompetence on Ms Hamilton's part in her dealings with the complainant. The complainant disputes the value of these assessments.

Whether the department failed to properly manage the alleged sexual harassment, intimidation and bullying of a student

13. The complainant and the department have provided me with comprehensive documents in relation to their involvement in this matter. I appreciate their thoroughness in this regard, which has assisted my investigation. The records which the department provided to me are listed in Attachment 1.
14. The complainant alleges in particular that the meeting arranged by Ms Hamilton involving student X and student A was wrong, and should not have occurred. She considers that the decision to conduct the meeting was made despite her disapproval, and in the absence of important relevant information.

Communication between Ms Hamilton and the complainant

15. The complainant states that she, and also Ms Gallucio, told Ms Hamilton not to proceed with the meeting. The complainant states that she advised Ms Hamilton of this by text, email and in person. She also believes it was 'illegal' of Ms Hamilton to go ahead with the meeting as student A was not represented at the meeting.
16. I sought evidence from the complainant to support her perspective. She provided me with a document which includes the following passage:

18.3.2013

[Student A] (not [Ms Hamilton]) told me that the facilitation meeting with [student X] has been shifted to Thursday from the agreed Tuesday and that despite her wanting me to come with her, Ms Hamilton has indicated that I will not be involved.

My problem with this is that [Ms Hamilton] is non communicative, secretive and until I had [Ms Gallucio] as a case manager, nothing ever was resolved esp (sic) last year with the ongoing conflict of interest that [Ms Hateley] had with [student A] (due to [student A's boyfriend]) and it affecting [Ms Hateley]'s ability to be an effective case manager for [student A]. There is a continual pattern of no leadership, slack process application and despite the open request for feedback on the program so as to improve things where it is lacking for the students, there is personal offence and ego retaliation in response.

Ive (sic) told [student A's boyfriend] today at lunch he needs to have Bevan with him when this meeting occurs.

Ive (sic) also told [student A's boyfriend] that he is to tell [Ms Hamilton] (since she does not want to engage in effective productive communication) that this is her last chance because it has been dragging on for weeks now and nothing has been achieved by the talking shes (sic) done to other students.

17. Further, the complainant advised me that:
 - I also texted and emailed the case manager and Sandy Hamilton, as well as instructed my daughter that I did not want [student A] attending the meeting at all.
18. The complainant also provided me with the text of an email which states she sent to Ms Gallucio when she became aware that the restorative meeting was planned, but before it occurred. The complainant states that she was seeking Ms Gallucio's comment prior to the complainant sending it to Ms Hamilton. However, Ms Gallucio did not read the email until after the restorative meeting had occurred.
19. The department has advised me that:
 - the incident was managed by the case workers and Ms Hamilton

- on 18 March 2013, Ms Hamilton 'tried to contact the complainant to see how [student A] was and to discuss the incident to see how they could move forward'. The complainant was unavailable, so a message was left for her to return Ms Hamilton's call
 - on 19 March 2013, Ms Hamilton again tried discussing the matter with the complainant whilst she was at the MCLC; that the complainant was unable to discuss the matter at that time; and that Ms Hamilton asked her to contact her to discuss the matter. The complainant did not contact Ms Hamilton
 - it has no evidence of any texts or emails sent to Ms Hamilton requesting that the meeting not go ahead.
20. On the basis of the evidence outlined above I am not satisfied to the requisite degree that Ms Hamilton acted inappropriately in her communications with the complainant about the restorative meeting. It appears that Ms Hamilton sought to advise the complainant about the meeting; and that the complainant's objections were made either through a third party to Ms Hamilton, or to Ms Gallucio.
21. In any event, I am not persuaded that it was unreasonable of Ms Hamilton to proceed with the restorative meeting even if she was aware that the complainant objected. I note that student A was 16 years old, and that it is conceivable that there may have been other reasons why it was appropriate to proceed with the meeting in the absence of her parent.

Student A's care plan

22. The complainant has also asserted that to proceed with the restorative meeting breached a care plan arranged for student A through her general practitioner.
23. I understand that student A previously had been under the care of a counsellor at the CAMHS, Ms Tucker, but that at the time of the incident, her CAMHS case was closed. The complainant has advised me that after student A's CAMHS case was closed, she was consulting her doctor (who is also the regional CAMHS treating medical doctor) about the preparation of a care plan involving psychological therapy for student A.⁵
24. The department advised me that the principal stated that he has no knowledge of a care plan, albeit that the complainant has referred to a GP care plan for student A; and that he has made requests to the complainant to provide a copy of the care plan referred to by her, but to date no care plan has been provided to him.
25. The principal's outline is consistent with what occurred at the three subsequent meetings between him and the complainant, as described in the notes of these meetings. The notes are extensive and appear to be a contemporaneous record of the discussion.
26. There is no reference in the notes of the meetings held on 5 June 2013 and 9 August 2013 to any care plan for student A. In the notes of the meeting held on 13 June 2013, the following exchange appears:

Discussion on case notes

[The complainant]: Why are there no case notes on Felicity?

[The principal] asked [the complainant] about case notes and if she has bought them into the school ie from outside counsellors or Drs.

[The complainant]; No, however she had told [Ms Hamilton] they were available as an option should she want them

[The principal]: [Ms Hamilton] rang CAMS (sic) and they said the case was closed last year.

⁵ Email to me dated 1 December 2013.

27. On the basis of the above evidence I consider that it was reasonable for Ms Hamilton to proceed with the restorative meeting in the absence of any specific advice about a care plan for student A.

Conduct of the restorative meeting

28. The department has advised me that during the meeting, student A was asked on multiple occasions if she was comfortable with the meeting going ahead without her mother there. Student A advised Ms Hamilton that she was comfortable with the meeting going ahead as it was.
29. I sought evidence from the complainant on her understanding of what occurred at the restorative meeting. She provided me with a document which includes the following comment, apparently referring to a conversation with her daughter:

22.3.2013

[Student A] had meeting with [Ms Gallucio] (case manager), [Ms Hamilton] (facilitator), [student X], Tia (case manager) [student X] (perpetrator) (sic)

What happened:

- Everyone sat down.
 - [Ms Hamilton] made me go first by explaining how i feel and how it all started.
 - [student X] was being immature by saying that he hates nick and stated that hes 'over this shit'
 - He looked like he didnt care about what was being talked about
 - [Ms Hamilton] and Tia summised that [student X] doesnt think before he acts. They are making a judgement without all the facts and denying everything thats happening. [student A's boyfriend] is a witness to this incident where [student X] was casing threat before attacking me.
 - [Ms Hamilton] asked me what i would do if something like that happens again, and i said nothing because i believe that nothing will be done about it. No response to this comment by [student X].
 - I tell people what i feel and experience and I keep getting told its a lie and that i dont know what I feel or experience going on around me.
 - [Ms Hamilton] said that if I dont like anything that goes on in the centre then I can leave. I dont see that as fair to me because Ive not done anything wrong so shouldnt be the one made to leave. When she said this to me in front of everyone, [student X] was smirking to himself under his hoodie.
 - [Ms Gallucio] my case manager was sitting next to me and quiet most of the time. She has always said to me that I dont have to go if I dont want to and mum said I could leave anytime I wanted to.
 - I went in there at first to say one thing (that if it wasnt going to stop I would get the police in) but the next thing I knew, I found myself dragged into everything and I never got to say this message in the end.
 - She made me feel that she was adamant that I sit in the room and do as I was told like a 5 year old. The ability to protect myself was removed because of forceful duress.
 - I dont want to go back to the facility because I dont feel safe, protected, respected and instead humiliated, anxious, fearful and depressed.
30. I do not consider that this outline indicates that the restorative meeting was conducted so poorly that it amounts to an administrative error on the part of the department. I consider in particular that Ms Gallucio's presence provided support for student A; and that it is significant that student A was able to express her view that she would not report such an incident again because nothing would be done about it.

31. In summary, whilst I understand the complainant's perspective as a parent, and her continuing concern about the well-being of her daughter, I have formed the view that there was no administrative error in the department's actions, for the following reasons:
- student A consented to be present at the meeting, and was encouraged in that by her counsellor Ms Gallucio
 - there is some doubt as to the extent to which the complainant's reservations about the restorative meeting were communicated to Ms Hamilton. Even if Ms Hamilton was aware of them, there is nothing to indicate to me that the complainant's views should have been treated as conclusive
 - subsequent relevant meeting notes state that Ms Gallucio was 'pleased with process (sic) that took place'⁶
 - the complainant's email exchanges with the principal after her initial meetings with him apparently indicate her (at least partial) satisfaction with the steps taken to assist student A⁷
 - the nature of the incident which gave rise to the restorative meeting in my view was not such as to require that the complainant was present.

Opinion

In light of the above, my final view is that in managing the alleged sexual harassment, intimidation and bullying of a student, the department did not act in a manner that was unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

Whether the department failed to lodge mandatory notifications under section 11(1) of the *Children's Protection Act 1993*

32. Section 11 of the Children's Protection Act deals with notification of abuse or neglect of children. Reference to 'the department' in this Act is to the Department for Families and Communities.⁸ Section 11(1) provides:

(1) If—

(a) a person to whom this section applies suspects on reasonable grounds that a child has been or is being abused or neglected; and

(b) the suspicion is formed in the course of the person's work (whether paid or voluntary) or of carrying out official duties,

the person must notify the Department of that suspicion as soon as practicable after he or she forms the suspicion.

Maximum penalty: \$10 000.

(2) This section applies to the following persons:

...

(e) a police officer;

...

(h) a teacher in an educational institution (including a kindergarten);

...

⁶ Notes of a meeting between the complainant, student A, Ms Gallucio and the principal, 13 June 2013, p2.

⁷ See in particular emails dated 18 June 2013

⁸ Regulation 5 of the *Children's Protection Regulations 2010* prescribes the Department for Families and Communities as 'the Department' for the purposes of section 6 of the Childrens Protection Act. However, I note that DECD now administers the Childrens Protection Act.

(j) any other person who is an employee of, or volunteer in, a government or non-government organisation that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children, being a person who -

- (i) is engaged in the actual delivery of those services to children; or
- (ii) holds a management position in the relevant organisation the duties of which include direct responsibility for, or direct supervision of, the provision of those services to children.

33. Sections 10 and 6(1) of the Children's Protection Act define what constitutes 'abused or neglected' for the purposes of section 11(1). They provide:

10—Interpretation

In this Division—

abuse or neglect, in relation to a child, has the same meaning as in [section 6\(1\)](#), but includes a reasonable likelihood, in terms of [section 6\(2\)\(b\)](#), of the child being killed, injured, abused or neglected by a person with whom the child resides.

6—Interpretation

(1) In this Act, unless the contrary intention appears—

... ..

abuse or neglect, in relation to a child, means—

- (a) sexual abuse of the child; or
- (b) physical or emotional abuse of the child, or neglect of the child, to the extent that—
 - (i) the child has suffered, or is likely to suffer, physical or psychological injury detrimental to the child's wellbeing; or
 - (ii) the child's physical or psychological development is in jeopardy,

and *abused* or *neglected* has a corresponding meaning;

34. Under these provisions, there is no obligation to report an incident unless a person suspects on reasonable grounds that a child has been or is being abused or neglected, as those terms are defined in the Act. In the event, no such notification was made about the incident. I have been advised by the department that none of the staff members who had knowledge of the incident considered that it warranted notification. The complainant takes the contrary view, namely that the incident warranted reporting to police and/or to the Child Abuse Reporting Line (CARL).
35. I agree with the departmental officers' assessment. In my view, the incident as I have outlined it above does not fall within the definitions of abuse or neglect under the Children's Protection Act.
36. In respect of an alleged assault on student B, the department has advised me that the principal was made aware by the complainant of her concerns with respect to student X and alleged bullying of student B from emails the principal received in April 2013. I understand that there had been some physical altercations between student X and student B during 2012.
37. The department has advised me that:
- student X was suspended from school on 5 February 2013 for four days for head-butting student B during the lunch break
 - suspension is the standard response to this type of incident

- the incident was not deemed to require the making of a mandatory notification.
38. I agree with the department's assessment. In my view, the head-butting event does not fall within the definitions of abuse or neglect under the Children's Protection Act. In her response to my provisional report the complainant reiterated that the event may amount to an assault, and I acknowledge that this is so. However, given all the circumstances I do not consider that it was an administrative error for the department not to report the matter to the police or CARL.
39. For the sake of completeness I note that the complainant has also suggested⁹ that student A and student B were treated disrespectfully and did not make good academic progress at the high school, and that this amounts to 'child abuse and neglect, let alone ignorance of duty of care'.¹⁰ I do not consider that such issues can amount to abuse or neglect as defined under the Children's Protection Act, such as to warrant a notification obligation.

Opinion

In light of the above, my final view is that in deciding not to report the incident the department did not act in a manner that was unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

Whether the department failed to declare a conflict of interest in relation to the appointment of a case manager for the student

40. In 2012, student A's case worker at MCLC was Ms Amy Hateley, who is a cousin of student A's boyfriend. Ms Gallucio took over as student A's case worker from Ms Hateley at the beginning of 2013.
41. Under section 16 of the Ombudsman Act, I must not investigate a complaint if it is made more than 12 months from the day on which the complainant first had notice of the matters alleged in the complaint, unless I consider that in all the circumstances it is proper to do so. It appears to me that this issue came to the complainant's notice in September/October 2012, when she emailed Ms Hamilton outlining her concerns about it.¹¹ In view of its connection to the complainant's other concerns, I consider it appropriate to consider the matter.
42. However, on the basis of the information currently available to me I do not consider that Ms Hateley's status as a cousin of student A's boyfriend was such as to give rise to an interest which would have precluded her from properly carrying out her duties, nor to a reasonable perception of a conflict of interest.
43. The department has noted also that as a public sector employee and in compliance with the Code of Ethics, if Ms Hateley believed there was a conflict of interest on her part, it was incumbent on her to make such declaration. The department has advised me that no such declaration has been made.

Opinion

In light of the above, my final view is that in dealing with the alleged conflict of interest of a case manager, the department did not act in a manner that was unlawful, unreasonable or wrong within the meaning of section 25(1) of the Ombudsman Act.

⁹ For example in her email to the Parent Complaint Unit dated 19 September 2013, 9:14am.

¹⁰ Email from the complainant to the Parent Complaint Unit, 11 September 2013, 5:26pm, p3.

¹¹ Email to me from the complainant, dated 1 December 2013.

Whether the department failed to properly manage the complainant's complaint

44. The complainant claims that the principal's investigation into student A's treatment by Ms Hamilton was not conducted properly. She also considers that she has not been properly informed of its results.
45. I have outlined above the steps which the department has taken to deal with the complainant's concerns; and Attachment 1 lists the departmental records which I have considered in forming my views on this issue.
46. The department has advised me that the principal believed it was a good idea to bring Ms Hamilton and the complainant together in an attempt to resolve the complainant's issues; but the complainant refused to meet with Ms Hamilton. He felt it was important to try and resolve the issues between the two of them for the sake of student B.
47. The department states also that specific information from student A's external therapists could not be obtained as written consent from the complainant to obtain this information was not given, which meant that any information that could have been gained from external therapists to assist with the investigation was not available. In response to my provisional report the complainant provided me with a copy of an email dated 13 June 2013, in which she provided to the principal contact details for student A's psychologist. I note that this email post-dated the restorative meeting.
48. It is unfortunate that the complainant did not receive a considered response to her complaints until the Chief Executive wrote to her on 11 November 2013. This is some six months after the incident, and five months after the principal indicated in his meeting of 5 June 2013 with the complainant that he would investigate the matter further.
49. Further, the Chief Executive's letter provides only a cursory outline of the investigation's results. Whilst it outlines the fact that the principal did not find any evidence of student A having been mistreated by Ms Hamilton, it does not provide any further detail of the steps which the principal took in conducting his investigation; nor does it provide the reasons for his finding. It simply notes that the principal 'was only aware of one external therapist, Ms Beth Tucker from the Child and Adolescent Mental Health Service (CAMHS), who advised him that she did not have any issues with how [student A] was being treated'.
50. The complainant has alleged that student A:

... was not registered for SACE just enrolled in the high school so her disability funding not provided and significant case management or any success for her to complete her education ,but evidently a means to fund an institution operation. This is scandalous! And now it is becoming community knowledge by other professionals such is the appalling (sic) situation.¹²
51. It does not appear to me that this issue has ever been addressed by the department in its responses to the complainant. In my view it should be.
52. I note also that the complainant objected to the principal seeking information from Ms Hamilton (the subject of his investigation) to assist in that investigation. However, it appears that this information related only to the contact details of student A's counsellor.¹³ The complainant had alleged that Ms Hamilton's actions did not accord with advice from her counsellor, but had not provided the necessary contact details. In these circumstances I do not consider that this was inappropriate for the principal to contact Ms Hamilton to obtain those details.

¹² Email from the complainant to the Parent Complaint Unit, 11 September 2013, 5:26pm, p2.

¹³ Email from the complainant to the principal, 1 August 2013, 3:17pm.

53. In view of the delay in completing the investigation, the fact that the complainant has only been provided with a cursory outline of the results of the investigation; and the fact that it did not address the issue of the alleged misuse of disability funding, I consider that the department erred in its conduct of the investigation.

Opinion

In light of the above, my final view is that in conducting its investigation of the complainant's concerns the department acted in a manner that was wrong within the meaning of section 25(1)(g) of the Ombudsman Act.

Whether the school principal made improper comments about a student

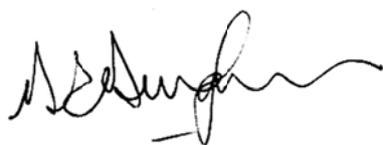
54. The complainant is offended by a comment which she alleges¹⁴ was made by the principal as follows:

Your mum really doesnt (sic) let things go does she? She keeps giving me hard questions. Dont (sic) you get into trouble with her, make sure you do as youre (sic) told when she tells you.'

55. The department has advised me that the principal denies making this comment to student B, and has stated that he counselled and supported student B on a number of occasions.
56. In order to be satisfied that the comment was made, I would need evidence to the standard required by the Briginshaw test set out above, under the heading 'Standard of proof'. In view of the passage of time, and in all the circumstances, I do not consider that there is any public interest in further investigation of this issue.

Opinion

In light of the above, my final view is that further investigation of this issue is unnecessary or unjustifiable within the meaning of section 17(2)(d) of the Ombudsman Act.



Richard Bingham
SA OMBUDSMAN

6 February 2014

¹⁴ Complainant's email of 21 November 2013 to me, p12.

Attachment 1**Departmental records considered during this investigation**

School records for students A and B

MCLC case management notes for student A, for the fortnights ended 11 April 2013; 10 May 2013 (2 sets, one appearing to be misdated); 21 June 2013; and 5 July 2013; and an end of term report for student A dated 14 July 2013

Draft report (undated) prepared by the principal, and a summary apparently prepared subsequently for internal departmental use

Notes of meetings involving the principal and the complainant held on 5 June 2013 (7 pages); 13 June 2013 (7 pages), and 9 August 2013 (2 pages)

Emails sent to the department's Parent Complaint Unit by the complainant, dated 29 May 2013, 16 August 2013, 11 September 2013 (acknowledged 16 September 2013) and 19 September 2013

Letters sent to the complainant by the Chief Executive, dated 19 July 2013, 8 September 2013 and 11 November 2013

Copies of emails and letters sent by the complainant to the principal on the following dates:

9 April 2013	4 July 2013 (3 emails)
7 May 2013	22 July 2013
10 May 2013	24 July 2013
14 May 2013	25 July 2013 (2 emails)
27 May 2013	29 July 2013
28 May 2013	1 August 2013
5 June 2013 (2 emails)	14 August 2013
6 June 2013	16 August 2013
7 June 2013 (2 emails)	22 August 2013
8 June 2013	24 August 2013
13 June 2013 (2 emails)	27 September 2013
14 June 2013	21 November 2013
18 June 2013 (2 emails)	28 November 2013

Copies of emails sent to the complainant by the principal on the following dates:

12 June 2013	4 July 2013
13 June 2013 (2 emails)	22 July 2013
14 June 2013	24 July 2013
18 June 2013	25 July 2013
3 July 2013 (sic) - appears to be in response to email dated 4 July 2013	30 July 2013
	7 August 2013

I note that some of these email exchanges are voluminous.