



Response of Board of Trustees to parents' complaint about bullying

Legislation	Ombudsmen Act 1975
Agency	Board of Trustees
Ombudsman	Peter Boshier
Case number(s)	449186
Date	August 2019

Summary

Failure of school to deal effectively with bullying of autistic and gifted student – parents complain to Board of Trustees – response received a year later- parents highly dissatisfied – investigation discloses that independent review conducted without parents' knowledge or input – Chief Ombudsman concluded that Board's response was unreasonable.

Background

The parents of a year 7 student with autism, Asperger's Syndrome and gifted, complained to the Board of Trustees (the Board) about the school's failure to deal effectively with the almost daily, verbal and physical bullying of their son by other students. The bullying resulted in their son suffering from severe anxiety, causing his GP to issue a certificate in November, absenting him from school for the rest of the year. The parents complained to the Board in November and did not receive a substantive reply until November of the following year. In the meantime, the parents had removed their son from the school on the basis that they were not satisfied that it provided a safe environment for him. The parents were highly dissatisfied with the Board's response, describing it as underwhelming and an insult.

Investigation

On investigation, the Board disclosed that it had sought the services of an independent reviewer to look into the parents' concerns and to report to it. The report was anonymous and disclosed that the reviewer had not interviewed either the parents, their son, his teachers or

the dean. No rationale was provided for the decision not to conduct any interviews. As a result, the Chief Ombudsman was left with the conclusion that the review was not intended to hold staff to account for the apparent failure to prevent the alleged regular bullying of the student. As for the failure to interview the parents, this deprived them of the opportunity to be heard, and to ensure that the reviewer was fully apprised of their concerns.

The review had been conducted on the basis of email correspondence and file information presented to the reviewer. The Chief Ombudsman was unable to establish who selected the material provided to the reviewer, and whether it included all email correspondence between the parties, or just some.

The fact that the review report was neither signed nor dated, was a further concerning feature. While the reviewer had sought to identify relevant experience from his or her curriculum vitae that he or she brought to the task, the report was anonymous. The Board may have had confidence about the independence of the reviewer. However, the absence of any name on the report, meant that there was no means for a third party to begin to establish this.

The review did not pay any attention to whether the school's policies and practices for dealing with bullying of the type experienced by the student, were fit for purpose, and in conformity with the Ministry of Education guidelines. The Chief Ombudsman was of the view that this should have been included in the terms of reference for the review. The student's mother had brought the Ministry's guidelines to the schools' attention in her attempt to ensure that it properly dealt with the continuing incidents of bullying that her son was experiencing. For the review to have value and credibility, it could reasonably have been expected that central to the terms of reference, would be an assessment as to whether the school's actions had been in accordance with best practice in dealing with this type of behaviour, well known to have a harmful effect on the health and safety of students.

While hand written notes made available by the school during the Chief Ombudsman's investigation disclosed that many of the bullying incidents included in the mother's log had been acted upon by her son's teachers, the notes served, in effect, to confirm the regrettable fact that the bullying incidents had been on-going, notwithstanding the parents' action to inform the school of the incidents and action taken by teachers. The fact that the bullying continued and student's health suffered, necessitating his withdrawal from school, was viewed by the Chief Ombudsman as indicative that the school had not been effective in dealing with the behaviour concerned. The Chief Ombudsman considered that making comments to a student who is constantly bullied, that were effectively for the student to accept the situation , cannot be reasonably regarded as an effective means of ensuring the student's '*right to a safe and secure environment.*' This right was articulated in the school's pastoral care policy. The Chief Ombudsman considered that the parents were entitled to view this as an inalienable right, irrespective of class sizes, and the number of hours in a week that '*a lively group of adolescent boys*' spend together. The Chief Ombudsman pointed to the school's particular responsibility towards this student given his known disabilities.

Board's governance role

The Chief Ombudsman accepted that it was open to the Board to have appointed a reviewer. However, he questioned why the Board had apparently felt unable to make a judgement call on the validity of the parents' complaint, knowing that whatever approach the staff and principal had taken to responding to the claims of continual bullying, it had been ineffective. The approach had failed to ensure that this student was safe, with the result that he was forced to stay away from school, given his state of extreme anxiety. The log of bullying incidents compiled by the mother, painted a sorry picture of relentless and troubling behaviour to which her son was subjected. The Chief Ombudsman considered that as parents, Board members could have been expected to feel sufficiently concerned about the behaviour and its cumulative effect on the student, that they would have sought to exercise their own judgement as to whether the school had failed in its pastoral care of him and quickly moved to address the situation, exercising their governance role to the full in the interests of not just this particular student, but the entire school community of which their own sons were members.

Responsibility for review process

Having opted to engage the services of an independent reviewer, the Chief Ombudsman emphasised that the Board was ultimately responsible to ensure that the review process was fair, appropriate, and sufficiently rigorous to deal with the significant concerns raised by the parents' complaint as to whether the school was a safe environment. It also remained the Board's responsibility to apply its mind critically to the review conclusions and determine whether the issues raised by the parents' complaint had been adequately assessed.

The Board had informed the parents that it was comfortable that the school had acted in a manner consistent with its legal obligations, the Board's policy and procedures, and the school's values and culture. Given the damage done to the student, the Chief Ombudsman commented that he could not understand how the Board could reasonably inform the parents that it was '*comfortable*'. Additionally, he did not consider that the Board could reasonably expect the parents to accept the view that staff had responded to their son and to them with '*professionalism*', given the failure to check the flow of bullying incidents. As early as May, a teacher had informed the mother that the harassment had reached the point where nothing could be done to stop it. The Chief Ombudsman did not accept that this was a professional response. In July, a learning support officer reviewed medical reports and the log of bullying incidents kept by the mother, and released the student for weekly counselling to deal with the effects of bullying. The parents stated that no action was taken to address the behaviour on a class or year basis. A promised buddy system never materialised, and taunts and physical abuse continued until by early November, by which time the mother had logged ninety such incidents.

Outcome

The Chief Ombudsman formed the view that the Board's response to the parents' complaint had been unreasonable. He considered it was unfortunate that the Board had not seen fit to inform the parents of the appointment of an independent reviewer or provide them with an

opportunity to engage with the reviewer. Had this occurred and the parents given an opportunity to respond to the reviewer's findings before they were finalised, they may have felt that the process had been at least fair, even if they disagreed with the conclusions. The Chief Ombudsman did not consider that the sentiments and generalisations articulated in the Board's letter responding to the parents' complaint to be reasonable, given the ineffectiveness of the school to stop the continual bullying of their son during the year, and the resultant effect on his well-being. The Chief Ombudsman recommended that the Board apologise to the parents for the manner in which it had handled their complaint. In concluding the investigation, the Chief Ombudsman drew the Board's attention to the fact that its harassment and complaints policies, did not appear to be available on the school's website. He considered that these key policies should be readily accessible to parents and students, and when reviewing the policies as the Board advised it intended to do so, he would expect it to have regard to ERO's recently published guide on bullying prevention and response.

The Board complied with the Chief Ombudsman's recommendation and apologised to the parents.