



**REPORT OF
DAVID McGEE, OMBUDSMAN
ON COMPLAINTS ARISING OUT OF
BULLYING AT HUTT VALLEY HIGH
SCHOOL
IN DECEMBER 2007**

**Presented to the House of Representatives
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INTRODUCTION

This is a report on an investigation into a series of violent incidents that occurred at Hutt Valley High School in December 2007. The incidents attracted considerable media attention and led to wider studies of bullying in schools by the Commissioner for Children and the Human Rights Commission.¹

The investigation was triggered by various specific complaints from a group of parents at the School, led by David Rutherford. The complaints were prompted by the School's refusal to retract a public statement made about it having handled the incidents reasonably and responsibly. The investigation covers how the incidents were handled by the School, Child Youth and Family (part of the Ministry of Social Development), the Education Review Office, and the Ministry of Education.

A chronology of events is appended to the report.

The investigation involved analysis of extensive paperwork, as well as written consultation and meetings with the agencies subject to the complaints. Police were also consulted, and their documentation surrounding the incidents examined. Police are not subject to the Ombudsmen Act 1975. Their actions were not the subject of complaint though they were relevant to the actions under investigation and I have taken them into account in forming my views.

This report analyses the background to the incidents, the incidents themselves and agency responses to them dealing with these in the order of the 18 specific complaints addressed to the agencies concerned. It makes three overarching recommendations to assist in avoiding similar situations in the future.

¹ *School Safety* by the Commissioner for Children in February 2009, and *School Violence, Bullying and Abuse*, by the Human rights Commission in March 2009. Neither report investigated the incidents themselves, but rather looked at broader issues relevant to school violence and bullying.

BACKGROUND

In December 2007 there were a number of incidents of assaults of male pupils by a group of other pupils. These were initially investigated by the Acting Principal and six boys were given stand downs, three for five days and three for three days. Following complaints from a parent, the Police commenced a criminal investigation and advised the local Child, Youth and Family liaison officer of the incidents.

In January 2008 there were media reports of the incidents and the then Chair of the Board of Trustees and the Acting Principal were interviewed. The Chair was quoted as describing the assaults as “minor” which was why they had not been referred to the Board for disciplinary action, while the Acting Principal said that he had no regrets about how he had handled the assaults and that “it wasn’t an assault where somebody had spilt blood”. The School subsequently issued its own press release explaining the measures it had taken to promote a safe environment at the School and met with parents of some of the victims. The boys who had been stood-down in December returned to the School on a staggered basis and steps were taken to monitor them.

Meanwhile other agencies became involved. The Minister of Education asked her Ministry to brief her on the situation and a team from the Ministry went to the School to help it prepare for the reopening of the School in February. When the School did reopen the Education Review Office conducted a week long on-site review leading to a special report on safety at the School.

Although the perpetrators admitted their involvement in offences no charges were brought and the matter was dealt with by way of a Police Alternate Action Family Group Conference held in March. The Ministry of Education mediated a meeting between the School and parents and ultimately a safety advisory group comprising parents, staff and Police was set up to review all aspects of school administration for safety.

However, a group of parents, represented by Mr David Rutherford, remained dissatisfied with the way the School had handled the incidents and their aftermath and with parts played in that aftermath by the Education Review Office and Child, Youth and Family. This dissatisfaction led Mr Rutherford, on behalf of the parents, to complain to the Ombudsman under the Ombudsmen Act about their actions and alleged omissions. In the course of my investigation I extended my inquiries to include the role of the Ministry of Education.

GENERAL CONCLUSIONS

The serious assaults that occurred in late 2007 at Hutt Valley High School were not one off incidents. They were part of a systemic problem of violence which, although recognised by the School, was not being addressed satisfactorily. Serious incidents of bullying were not being fully investigated or punished appropriately. The School's discipline policies were not being applied consistently, resulting in systemic under punishment of violent incidents. Anti-social children were being retained within the school system, without a viable wider strategy for addressing the resulting safety issues. Teachers were not performing scheduled duty, some for fear of their own safety.

The School had not adopted the recommended Child Abuse policies, meaning that situations amounting to child abuse were not being reported to Police or Child, Youth and Family, and the needs of victims were not being met.

The School was not alone in its knowledge of the situation. Violence at the School had come to the attention of the Ministry of Education, through the Eliminating Violence survey, and the Education Review Office in the course of its 2006 review.

Bullying is not something that can be tackled by a single action. A change of culture can only be addressed through comprehensive engagement at every level of the agency. The incidents at Hutt Valley High School in 2007 prompted that change of culture, and the School has since made a comprehensive effort to address the issues concerned.

ABBREVIATIONS

“BOT”:	Board of Trustees of Hutt Valley High School
“CYF”:	Child, Youth and Family Service (part of the Ministry of Social Development)
“ERO”:	Education Review Office
“MOE”:	Ministry of Education
“MSD”:	Ministry of Social Development
“NAG”:	National Administration Guideline
“the School”:	Hutt Valley High School

COMPLAINTS AGAINST HUTT VALLEY HIGH SCHOOL

The main complaint made against the School is that it described itself as having acted reasonably and responsibly in its response to the assaults that occurred at Hutt Valley High School, and that subsequent requests by parents to retract that statement were rejected.

The following specific complaints were made in the context of Mr Rutherford's main complaint that the School failed to act reasonably and responsibly:

1. The BOT did not have in place recommended Child Abuse guidelines.
2. The School may have inaccurately stated in its Board Assurance Statement to ERO in June 2006 that it had reviewed its procedures on Child Abuse (preventing and reporting), given that it did not have in place the recommended Child Abuse guidelines.
3. The School did not immediately inform parents of the victims about the assaults, and in most cases never informed them.
4. The then Acting Principal miscalculated the level of abuse suffered by victims when he determined the disciplinary steps to be taken against the offenders.
5. The BOT prioritised the perpetrators' right to education over the victims' right to both education and personal safety.
6. The BOT failed to seek confirmation from the Police of the seriousness of the offending after being apprised of it by the parents on 26 January 2008.
7. The School failed to impose more serious disciplinary sanctions either:
 - a. when the Police confirmed that serious Crimes Act assaults had been committed; or
 - b. when the School had the full Police file.
8. The then Chair of the BOT failed to inform CYF of the seriousness of the offending when the Police confirmed it on 3 February 2008.
9. The School informed neither the MOE nor ERO of its knowledge of the seriousness of the offending, or that it had been advised by 3 February 2008 that in all but one case the offending had been admitted.
10. The School, when given a copy of the ERO report to comment on, did not correct the description of incidents described in the ERO report as "chasing activity". This was in spite of the fact that the School was aware at the most senior levels (then BOT Chair and then Acting Principal) that:
 - a. the incidents were serious Crimes Act assaults including sexual assault; and
 - b. there were 15 admitted assaults on 9 victims by 6 offenders over a period of days that had gone unobserved by staff and unreported by students.
11. The BOT's decisions on communications to parents put concerns about the financial implications of bad publicity on international student enrolments and other less important matters ahead of the harm done to victims. The Board did so by making statements that minimised the seriousness of what happened and saying the School had acted reasonably and responsibly in the handling of the incidents.

In addition, the parents complained about the accuracy of the BOT's Assurance Statement in June 2006 that: "Since the last ERO review the Board reviewed health and safety policies and/or procedures in the school linked to: ... Child Abuse (preventing and reporting)" given that the Board had not adopted the advice of the MOE to have child abuse guidelines in place.

Events in lead up to incidents

The documentation that I have received from the School and the MOE indicates that, in the period leading up to the incidents, there were some problematic behavioural trends emerging at Hutt Valley High School.

At a 22 November 2006 BOT meeting it was reported that the Planning Group had held a meeting on 1 November 2006 and decided on two priorities for 2007. The second priority related to improving the culture of respect and reducing the number of violent incidents:

"To improve the culture of respect within the school.

Objective

1. School wide analysis of behaviour issues is undertaken
2. Restorative justice practices are investigated and adopted, if appropriate
3. Initial focus on the Year 9 intake
4. Violence is unacceptable and dealt with accordingly.

Outcomes

1. Problems are identified and strategies to address these are implemented
2. All members of the school community become more accountable for their behaviour
3. The improvement in school culture will grow through the school as the year levels move through
4. Fewer violent incidents occur.

After discussion the Board agreed that these are suitable Priorities from which to develop student achievement targets for the 2007 annual plan."

In 2007 the School started the year with four new priorities, designed to become an integral part of the School, the second of which, "Manners Matter", appears to have been designed around enhancing a culture of respect in the School:

"Manners matter: Treat everyone with respect. Ensure your participation in class is positive. Be courteous in the corridor. Always use appropriate language."

Eliminating violence survey

In March 2007 the School undertook a Ministry of Education Eliminating Violence Programme. This was a tool that had been developed by the Ministry to survey staff and students on the extent of violence in individual schools, and to develop strategies to address any issues revealed in the survey. The survey was conducted over a two day period and involved interviews with students, staff and parents and observations of the School by survey staff.

A quarter of male students surveyed reported having been hit or kicked in the preceding 24 hours. Additionally, in the same period 35% reported having been pushed or shoved, and 18% threatened. The survey also recorded that over a quarter of teachers reported having themselves been bullied or harassed by students, and over half of them thought that physically hurting was a problem at the School.

The survey of teachers also indicated concerns about discipline and student supervision. Approximately half of teachers surveyed thought student discipline/behaviour management was a problem, and the same number thought student supervision was a problem.

A consistent theme which emerged from interviews with pupils was the need for more serious and consistent consequences to address violence and bullying. Typical comments were: "teachers need to be more strict with the violence, teachers are going too soft with violence"; "bullies [should] get expelled so they can't hurt anyone else"; "different consequences for people's actions instead of detentions"; "get more discipline"; "get harder on bullying"; "expel the bullies"; "if people were expelled or suspended more readily"; "making sure that those who do bully are punished in some sort of way in order to try and stop bullying"; "...more teachers that take action against bullying"; "stricter policies on anti bullying"; "...suspension for smaller stuff".

Similarly, numerous pupils said that the School would feel safer if the breaks were better supervised. Typical comments were that there was a need for "more supervision from teachers around the school"; "more teachers on duty to try and stop the fights and other stuff"; "more teachers walking around the school"; "more teachers on duty at lunch and morning tea"; "if the teachers patrolled on school grounds better"; "teachers on duty at interval and lunch"; "teachers on patrol more instead of standing around". A number of others suggested security guards, and/or more use of security cameras around the school, and even on-site police.

A number of staff surveyed also suggested a need for harsher and more consistent punishments for bullying. Among the comments were: "I think we need to be firmer on violent behaviour, not so many chances for repeat offenders"; "the senior admin need to be more consistent and tougher in dealing with things. If a student does something wrong of a bullying/threatening nature then it needs to be dealt with – not a chat between teacher and student to see what happens next ..."; "More severe punishment for the bullies so that they understand it will not be tolerated, at the moment it is just a joke".

The observations of survey staff in the school grounds indicated that there were issues with both violence, and supervision of students in the breaks. Comments included: "did not see any staff on duty around classrooms"; "no teachers in area at beginning of observation"; "no teachers in area during observation"; "hard to notice where teachers are on duty"; "no adults seen in the field area at interval"; "no apparent teachers monitoring arrival of students to school around the bus area"; "no adults visible around the lower field area after school as the students were leaving"; "no teacher around when one person did their observations, all occurring at interval or lunch".

Survey staff also observed a high number of violent incidents during the two days of the survey. Their notes recorded four fights being observed, including a group brawl, and a fight which resulted in the victim having blood on his face. In addition to the fights, the notes record a student being pushed backward over a railing, another student being pushed down a hill, a third being knocked to the ground, a female student being threatened, as well as numerous incidents of verbal abuse.

MOE follow up to survey

Generally, responses to Eliminating Violence surveys were devised for schools by the MOE. However the Hutt Valley High School undertook the survey on the basis that it would develop internal responses to the issues revealed in the survey, so the MOE left the response to the survey in the hands of the School after the power point presentation.

MOE advises that it is standard practice for it to have ongoing involvement with a school after an Eliminating Violence survey. In this case its involvement was to collate the data and provide it to senior management as the Hutt Valley High School had decided to address the results of the survey internally. It advised that this was not a standard course of action (the standard approach being to have continued involvement with a school to devise strategies to address the outcome of the survey). I queried why a non-standard approach had been followed in this case.

MOE stated that “while any violence in schools is a concern, the data collected in March 2007 did not identify any unusual trends that indicated the school would not be able to address the issues internally”. I disagree. The fact that a quarter of boys recorded having been kicked or hit in the preceding 24 hours, in addition to the problems with staff supervision and discipline of students revealed in the survey, corroborated by the lack of supervision and violence witnessed by the assessors, in my view were suggestive of problems at the School that warranted ongoing MOE involvement with the follow up of the survey (in accordance with its standard practice). The results of the survey were potentially indicative of systemic problems with the management of the School that could (and in the event did) impact on the School’s ability to implement effective internal strategies to address the results of the survey.

I also note that when collating the materials for school management (which was done by means of a power point presentation) there was no reference to the most serious incidents of violence, being the four fights witnessed. Instead, other less violent behavioural incidents were highlighted.

The MOE did, however, suggest that violence at the School could be tackled by “more serious consequences for bullying/violence” and “more adults to supervise/patrol”, as well as a confidential way to report bullying.

The School’s follow up to the survey

Following the Eliminating Violence survey, the School held teacher only days on 23 and 24 April 2007 to deal with its results. The purpose of the sessions was described as “to collectively develop strategies to improve the culture of Hutt Valley High School”.

The themes that emerged from the Eliminating Violence survey, of inadequate consequences to violence and problems with staff supervision at breaks, were borne out at the conference.

One staff member referred to a “culture of violence” in the School, and indicated that incidents of violence were not being addressed, stating, “each time an incident occurs that is not responded to we allow the idea that violence is the way to solve problems to propagate and it adds to the culture of violence at school”.

Comments recorded from the training days added context to concerns expressed in the Eliminating Violence survey about lack of staff supervision of pupils in breaks. Comments indicated that staff were not performing scheduled duty periods and not being disciplined for this by senior management. The failure of staff to perform duty appears to have resulted from staff feeling intimidated, as there was reference to "Crowd/mob-swarming behaviour threatening to staff". Other material suggests that there was a specific issue of female staff members often refusing to perform field duty unaccompanied, or at all, due to verbal sexual abuse of staff by pupils which when reported resulted in no action being taken against the pupils concerned. ERO notes also recorded "some teachers "scared" of duty".

One of the suggestions at the teacher only session for tackling the problem of teachers not performing scheduled duty was a buddy system to help staff feel "safe and secure on duty". Various other suggestions were made including follow up by senior administration for those not doing their jobs, an auto-reminder on the morning that staff had their duty, and incentives such as chocolate bars for staff to perform their duty.

The notes of the specific session on bullying and harassment indicated that staff felt that the bullying and harassment itself needed to be tackled by strong leadership, more communication, and consistent and fast responses to bullying. Comments included that stand downs are not effective and "seen as a holiday by kids".

The results of the teacher only day were collated into the following responses -

"What are the problems you perceive?

- a. Aggression in the school grounds
 - i) Physical and verbal assaults
 - ii) Aggression as entertainment fight club, videoing
- b. Defiance of students towards teachers
 - i) Bush lawyers, anonymity of students to staff
- c. Lack of respect for school environment
- d. Apparent lack of consequences for offences
 - i) Consequences have little impact
 - ii) Perceived inconsistency by admin
- e. Staff sometimes unwilling to take responsibility for issues beyond the classroom
- f. Overcrowding of site."

The key outcomes were described as follows –

"We need to have:

- Clear and consistent messages and appropriate consequence
- All students and staff with a shared understanding of our expectations
- Preventative rather than reactive responses
- All staff taking responsibility for school discipline."

Following the survey a powerpoint presentation was given to students at assembly advising them about the results of the Eliminating Violence survey, and the staff training days. Students were told that, "if you have ideas that could help reduce violence around the school please let me know or discuss these with your teachers". Students were also advised as to the process for standing down and the numbers of stand downs for the year, a suggestion which seems to have come out of the training days. The presentation was summed up with the comment, "I am absolutely sure the vast majority of you here now would prefer a school environment free from bullies, thieves and gangsters. I am also sure that eliminating violence is an achievable goal and with your help we can make our school a better place."

In spite of clear messages emerging from the Eliminating Violence survey and the professional development days about the need for better staff supervision during breaks and harsher consequences for bullying and violence, the School appears not to have made the suggested changes in those two areas in the seven months between the staff conference and the December 2007 incidents. Instead the emphasis was on “an improved culture through activity”. Students were given extra activities in the breaks, including access to games, and sports gear, and a weekly movie at lunchtime.

It is noted that one of the victims stated in a Police interview that there were “no teachers on duty” during the two weeks during which the assaults took place and therefore that the perpetrators could “do it everywhere”.

Complaint 1 - Lack of Child Abuse guidelines

Complaint 1 is that the Board of Trustees did not have in place recommended Child Abuse guidelines.

On 13 March 1997 the MOE issued a circular on the responsibility of Boards of Trustees for the personal safety of students (Circular 1997/12). In part 4, schools were “strongly advised” to follow the policies and procedures for the voluntary reporting of child abuse as recommended in the booklets *Breaking the Cycle: Interagency Protocols for Child Abuse Management* (1996), and *Breaking the Cycle: an Interagency Guide to Child Abuse* (1995). Both publications were appended to the circular. The guidelines were updated and reissued on 8 November 2007, the month before the incidents.

The 1997 circular emphasised the importance of dealing appropriately with complaints of child abuse, stating: “all complaints of alleged abuse must be taken seriously. Schools need to act immediately to ensure the safety of the students and to prevent any problems from escalating”.

The 1996 Protocols were aimed at multiple agencies but contained two parts which were specifically directed to schools.

Part 1-12 to 1-14 of the Protocols provides specific guidelines to schools for responding to allegations of peer sexual abuse. Sexually abusive behaviour between peers is defined as, “any abusive behaviour which takes place without the willing consent of all individuals involved, is coercive or violent in nature and involves exploitation of power in any way”. Organisations are asked to “ensure that no form of physical, sexual or verbal harassment or violence is sanctioned or minimized in any way”.

The key elements of the guidelines as they relate to peer on peer sexual abuse are as follows:

1. Schools should not attempt to manage the situation on their own as they do not have the powers or expertise to carry out the necessary investigations or interventions. Instead they should refer the matter to CYF or the Police, and work with those agencies to determine the nature and breadth of the investigation.
2. Schools should be supportive and sensitive to both victims and perpetrators.
3. The children should be separated while the matter is being evaluated.
4. Schools should not breach the privacy of those involved, and avoid media contact.
5. Schools should establish procedures for communicating with and supporting parents of pupils not directly involved so as to manage parental anxiety.
6. Schools should review and promote personal safety information programmes.

Part 5-1 to 5-10 contains a “National Protocol agreed by the Ministry of Education, the New Zealand School Trustees Association and NZCYPS (CYF)” for general situations of child abuse. It includes:

- Provision for staff training to recognise and respond to child abuse.
- Requirement to ensure the immediate safety of the child.
- Requirement to write down disclosures made by the child.
- Instruction not to formally interview the child or young person.
- Provision for the Principal to notify CYF or the Police.
- Procedures for managing child abuse allegations against employees in schools.

Response of the School to Complaint 1

In response to this complaint, the School acknowledged that it had not adopted the recommended Child Abuse guidelines. Its explanation for this was that the guidelines were not compulsory, and that the School’s other processes were considered to be sufficient.

The School also noted that the MOE had updated and reissued the guidelines on 8 November 2007. The School’s view was that this action indicated that the Ministry perceived that boards around the country still needed to consider and implement these recommendations. It stated: “Hutt Valley High School clearly could not be alone in not adopting the recommendations, or the Ministry would not have felt compelled to update them.”

I am not persuaded by the School’s explanation for its decision not to implement the recommendations. I accept that both sets of guidelines were fairly bulky publications only parts of which were relevant to schools. It would therefore have been helpful if the MOE had drawn out the relevant parts into a separate publication to reduce the resources required of boards to consider the relevant policies.

That being said, where the MOE strongly advises schools to adopt guidelines or policies, I would expect a school to give careful consideration to implementing them and to have a compelling and well documented explanation in the event that it decides not to. No documentation was provided to me justifying a decision not to implement the guidelines, and the explanation that existing processes were considered sufficient is not convincing. While the School had a policy on sexual abuse of students (the “Sexual Abuse Prevention Policy 2003”) and a sexual harassment policy (the 2005 Sexual Harassment Policy), neither policy implemented key elements of the Child Abuse Protocols, namely the requirement to report suspected abuse to CYF or the Police, and not to interview victims of sexual abuse. Additionally, the Sexual Abuse Prevention Policy was specific to sexual abuse of children and did not cover the broader issue of other forms of child abuse, and the 2005 Sexual Harassment Policy was aimed at sexual harassment (unwanted sexual attention) rather than sexual abuse (violent or coercive sexual behaviour).

Comments of the School on whether Circular 1997/12 was implemented

In addition to its comment that its existing processes were such that it did not need to implement the recommended protocols on child abuse, the School maintained that its actions at the time of the incidents conformed to the Child Abuse guidelines. Its reasons for this appear to be that staff members encouraged the mother of Pupil C to take the matter of her son’s abuse to the Police, after she made a suggestion that she may take such action.

I do not consider that the endorsement by staff of one parent's decision to report her child's assault to the Police can be viewed as practical implementation of the guidelines. The guidelines emphasise a school's role in reporting abuse and subsequently working with the agencies concerned. Liaison with the agencies is a duty incumbent on a school; is not something that is to be delegated to other parties. Additionally, the complainant whose mother reported the incident was only one of numerous victims. There is no suggestion that the School encouraged the parents of the other victims to lay complaints with the Police. Moreover, the School continued to conduct interviews itself after the matter had been reported to the Police rather than leaving those forensic interviews to the Police which, if it had been implementing the guidelines, is what it would have done.

The School has also emphasised that "it functioned under a referral process which complied with the School's experience whereby the Police were reluctant to entertain any complaint that did not come directly from the offended party". The informal protocol which the School maintains existed at the time was at odds with the Child Abuse Protocols, which required schools to report child abuse. Moreover, the Police have indicated that the protocol concerned related only to minor incidents such as thefts. The Police were of the view that serious offences such as the assaults at issue ought to have been reported by the School itself.

Conclusion on Complaint 1

This complaint is sustained.

I note, however, that the School has, since the incidents, taken steps to remedy this problem in conjunction with the Police and now has implemented an appropriate Child Abuse policy.

Complaint 2 – Inaccurate statement to ERO

The second complaint was that the School may have inaccurately stated in its Board Assurance Statement to ERO in June 2006 that it had reviewed its procedures on Child Abuse (prevention and reporting), given that it did not have in place the recommended Child Abuse guidelines.

The background to this part of the complaint is that boards are required, as preparation for an ERO review, to fill in various Self Audit Checklists. Hutt Valley High School filled out various such checklists in preparation for the ERO review of 2006. As part of the Health and Safety checklist, the BOT was required to declare whether, since the last ERO report, it had reviewed health and safety policies in various areas, including in the area of "Child Abuse (prevention and reporting)." In its 2006 Board Assurance Statement to ERO, the School's BOT certified that it had undertaken a review of its Child Abuse (prevention and reporting) policy in the 2003-2006 reporting period.

The BOT disputes that its statement that it had reviewed its policies on Child Abuse (prevention and reporting) was inaccurate, stating: "this was the Board signing off of policy review completion in the period between 2003 and 2006. The fact that the review did not include a non-mandatory guideline does not mean that the statement is inaccurate".

The BOT further stated that: "the Education Review Office's triangulation procedure (checking documentation against what is observed against what is confirmed by interviews) would have found fault if the statement were inaccurate, and would have been recorded in the review. No such criticism was made".

As evidence for the BOT's review of procedures, the BOT stated:

“the following policies are reproduced to provide proof that between 2003 and 2006 the then Board completed policy review in the area of Child Abuse (prevention and reporting)....

Sexual Abuse Prevention Policy (Approved 2003)
 School Health Service and Clinic (Ratified 24/3/04)
 Sexual Harassment Policy (Ratified 30/11/05)
 Health and Safety (Approved 2006).”

While I accept that the BOT implemented a Sexual Abuse Prevention Policy, and a Sexual Harassment Policy over the period in question, I do not consider this can reasonably be described as a review of the Child Abuse (prevention and reporting) policy as declared by the BOT to ERO. For the reasons discussed above, the School had not implemented a “reporting” policy in respect of child abuse. None of its policies included a requirement to report child abuse. There is no evidence that the BOT considered or reconsidered the Child Abuse Management Protocols that had been recommended by the MOE at the time the Sexual Abuse and Sexual Harassment policies were implemented. In the absence of a Child Abuse (prevention and reporting) policy, it is difficult to see how such a policy could have been reviewed.

This complaint is sustained.

Complaint 3 - Failure to inform victims

Complaint 3 was that the School did not immediately inform parents of the victims about the assaults, and in most cases never informed them.

The School acknowledges that the parents of two of the victims were not informed of the assaults by the School. The School’s explanation for its failure to inform those parents was as follows:

“this was an error of omission on a day when a large and complex investigation was under way involving several staff with multiple interviews ... The original omission was not ... an act that indicated an unreasonable or irresponsible element was present. It was a mistake caused by a rapidly expanding investigation late on a Friday.”

I do not accept the School’s explanation. The School appears only to have contacted the parents of perpetrators to discuss the disciplining of their children. The fact that some of those perpetrators had also been victims appears not to have been a feature of the telephone calls made. The parents of the victims who were not also perpetrators were not called at any stage, even though two of the victims reported the most serious assaults. In this regard I note that the assaults committed against members of the perpetrator group appear to have been less severe than the assaults committed on those outside the group.

Had the recommended child abuse policies been adopted, the School would have focused its response on the needs of the victims as well as its obligations to the perpetrators, including ensuring appropriate support structures were in place in the victims’ home environments. An elementary first step to this would be telling the families concerned.

Under section 77(b) of the Education Act, school principals are required to take reasonable steps to inform a student’s parents of matters that are “harming the student’s relationships with teachers or other students”. I consider that the nature of the assaults was such that the section 77(b) threshold was met, and the then Acting Principal had a statutory obligation to inform the parents of both the perpetrators and the victims of the assaults.

This complaint is sustained.

It should be noted that the School has now taken steps to address the issues raised in this part of the complaint. First, and importantly, the then BOT Chair verbally expressed regret to parents about not contacting victim parents (although their requests to have the apology in writing were refused). Second, it has undertaken a full review of its incident procedure documentation to ensure that victims' parents are informed in future such situations.

Since viewing a draft of this report, the new management of the School has advised that it "absolutely accepts that a victim's caregivers should always be informed of an incident. The school accepts that its failure to inform some victim's parents was unreasonable..."

Complaint 4 - Inadequate penalty for assaults

Complaint 4 was that the then Acting Principal miscalculated the level of abuse suffered by victims when he determined the disciplinary steps to be taken against the offenders.

Background

The disciplinary action taken against the offenders was as follows:

- Three of the offenders were stood down for five days (the maximum period that a pupil can be stood down within a term).
- Three of the offenders were stood down for three days.

School's response to the complaint that the punishments were insufficient

The School initially defended its disciplinary action, stating that the then Acting Principal acted according to the School's policies and processes, and that he and senior staff took appropriate steps to ensure that information was complete. It further stated: "a doctor's report was submitted to the school following an examination, and the result was that the report did not find evidence of the type of injuries consistent with the allegations made at the time".

The School stated that, in spite of this, it was clear that "a significant assault had indeed occurred" and that the then Acting Principal proceeded on that basis. It stated that the then Acting Principal made his decision to stand down the students "based on the witness statements and the medical evidence presented to him, and within the range of remedies that were available to him" and that this was "neither unreasonable nor irresponsible".

The School also noted that the stand downs occurred during the last week of term so none of the pupils concerned would return to school until the following year.

Information available to the School from the initial witness statements

The information in the initial statements of the perpetrators and victims that was before the then Acting Principal at the time he made his decision to stand down the pupils revealed a pattern of repeated, premeditated, systematic assaults orchestrated by them on numerous victims using a variety of sharp objects including scissors, branches, drills, screws, pens and pencils, and described by students as "bum rapes". The group attacked both its own members and other students, the more severe assaults being on non-group members. One of the victims was kicked in the face when he refused to kiss the shoes of the perpetrators after one of the assaults, and another who was subject to approximately 10 attacks, was kicked in the face on more than one occasion and threatened with a pocket knife after one of the assaults. (Later interviews with the Police revealed that victims had screamed with pain during the assaults.)

One of the perpetrators threatened to perform group anal assault on a boy who was selling pocket knives at the school, in order to extort a knife from him at a discounted price. (The boy who is reported to have sold knives at the School appears not to have been disciplined for his activities.)

The School's policies and processes

The School's applicable policy on discipline at the time of the incidents was the Discipline Policy approved by the BOT in 2000.

That relevant part of the policy provided as follows:

"Abuse of students by students

Response to all cases of abuse, verbal or physical, will be informed by circumstances surrounding the incident. Responses may include:

1. No further action
2. A number of detentions/contact with parents and/or removal of student from class
3. Stand-down
4. Referral to Board of Trustees

In most cases involving verbal abuse of a fellow student where responsibility is clear the least severe option would be as in 2 above. Any further offences of this nature within the same calendar year after this consultation may result in stand-down."

The policy also stated that all actions were to be governed by the July 1999 Ministry Guidelines. The Discipline Policy was approved in 2000, to be reviewed in 2005. It seems from the documentation that the 2005 review did not take place, and that the updated Ministry Guidelines for Stand Downs, Suspensions and Exclusions (June 2005) had not been adopted by the School.

The School stated that it had acted in accordance with its Discipline Policy. I disagree. To the extent that the policy provided guidelines on the level of punishment for abuse of a fellow pupil, the punishments were anomalous. The guidelines indicated stand down to be an appropriate punishment for a second offence of verbal abuse. Involvement in systematic violent pack assault with sexual overtones is plainly in a considerably more serious category than a second act of verbal abuse, and the penalty levelled should accordingly have been higher.

The punishments were also disproportionately low when considered against the guidelines in the School's Discipline Policy for punishments for other categories of behaviour. The guidelines indicate that a second alcohol offence, physical abuse of a staff member, and drug use would likely warrant suspension or exclusion. The offences at issue are in my view of a nature and scale that renders them at least on a par with such offences.

The use of the medical report as justification for standing down the pupils

One of the reasons the School cited in support of its decision to stand down the pupils rather than suspend or exclude them is that "a doctor's report was submitted to the School following an examination, and the result was that the report did not find evidence of the type of injuries consistent with the allegations".

The School's use of the medical report to disprove the most serious allegation (being a penetrative assault with a screwdriver) is of concern to me. I consider that the medical report could not reasonably

be interpreted as disproving that allegation (and I note that there is subsequent corroborative material in Police interviews that holes were ripped in victims' trousers prior to the assaults). That aside, the School should not have taken it upon itself to interpret the medical report, but should have consulted with the Police who were investigating the matter, in accordance with the Child Abuse guidelines.

I also note that the medical examination appears not to have conformed to the then operative Joint CYF/Police Serious Abuse Team Protocol on the investigation of child sexual abuse and the serious physical abuse protocol, which requires that medical examinations in cases of alleged sexual abuse be undertaken by a specialist medical practitioner.

The use of the prior records of the perpetrators as justification for standing down the pupils

The School also advises that it took into account the prior good records of the perpetrators in determining the punishments. Past good behaviour can be a mitigating feature of behavioural infringements, but cannot of itself be used to avoid referring a matter to the BOT in alleged serious systematic criminal behaviour such as that involved in this case. It is also noted that the Eliminating Violence survey and subsequent staff training days had identified insufficiently harsh consequences for violent offences on the part of students. It was therefore possible that some of the students had been involved in previous violent incidents that had been under-punished.

Underpunishment at the School

I am of the view that stand downs were insufficient punishment for the actions in question and that the then Acting Principal should have suspended the pupils and referred the matter to the BOT so that it could consider what, if any, further action was warranted. Even disregarding the most serious allegation of direct penetrative assault, the systematic pack assaults with sharp objects and surrounding threats and intimidation, as described above, would seem to have justified, at a minimum, suspension of the perpetrators. The issues in question were too serious to have been dealt with at the Principal's level through stand downs.

Suspension as opposed to stand down would also have ensured that the decision could have been fully reviewed if further information came to light in the Police investigation.

This failure to impose appropriate punishments is consistent with the earlier criticisms of inadequate accountability for violent actions at the School, which involved a combination of inadequate investigations into serious offences, and insufficient punishments. In addition to the themes from those surveyed in the Eliminating Violence survey and the subsequent staff conference about inadequate consequences for violent incidents, correspondence that was made available to me in the course of my inquiries revealed examples of other violent incidents which appear not to have been investigated, documented, or punished appropriately.

One of the letters refers to a pupil receiving a day's stand down for pushing another pupil down the stairs and kicking him in the head and chest until he was unconscious in 2004. A letter from the BOT to the School confirms that the pupil was punished through a day's stand down. The School's response when this letter was drawn to its attention was that, although the BOT told the parents that the pupil had received a day's stand down, the School had advised the MOE that the stand down was for two days. The School further stated "the student file does not contain an incident summary or notes" and therefore it is not apparent whether the fact that the victim was rendered unconscious was taken into account in the punishment. It seems that there were deficiencies in the investigation, documentation and punishment of this incident.

In a second example, according to a letter from a parent to the MOE no punishment was imposed for an incident in 2007 when a group of pupils held a pupil down with a chain around his neck and attempted to burn him with a lighter. The pupil in question was a victim of the December 2007 incidents. According to the parent's letter, the management response was to advise the victim to stay in "safe areas".

The School responded to this allegation by maintaining that there was no ability for it to act on the complaint as there was no corroborative evidence and no perpetrator could be identified. This may be the case. However, in spite of the extremely serious nature of this allegation, no record was kept of the complaint or subsequent investigation. An allegation of such serious abuse should have been carefully documented then referred immediately to the Police. The parents of the victim should, of course, also have been informed of the outcome of their complaint to the School (as well as of the original complaint by their son), a matter which the School now accepts.

Conclusion on Complaint 4

Among the documents before me were references to the School having a policy of only using suspension as a "last resort" and keeping antisocial students within the School.

I accept that the use of suspension as a tool of last resort accords with advice from the MOE in the June 2004 Guidelines for Principals and Boards of Trustees on Stand Downs, Suspensions, Exclusions and Expulsions. This is consistent with the desirability of maximising educational opportunities for all pupils, including those with behavioural difficulties. However, when the anti-social behaviour involves violence towards other pupils, the overriding consideration must be ensuring the safety of those other students. Not only is safety a basic requirement of any agency with persons in its charge, but it is expressly required under National Administration Guideline 5 which requires schools to "provide a safe physical and emotional environment for students".

Had the School operated a policy to keep anti-social students within the school system in conjunction with comprehensive processes for addressing individual student violence, then such an approach would have been appropriate. Comprehensive processes would need to include addressing the behaviour of the student concerned (through individual and/or group counselling and other restorative justice processes) and protecting other pupils (such as rigorously enforced conditions on the perpetrator pupils' activities at school).

To the extent that the School operated a policy of keeping anti-social students within the school environment (a laudable goal in itself), I see no evidence of it adopting any comprehensive and effective supplementary programmes to work with the individuals concerned to address their violence and protect other pupils. I also note that the policy sat uneasily with the BOT's discipline policy, which provided specific penalties of stand down, suspension and exclusion for different behavioural infringements.

This complaint is sustained.

In the course of my investigation, following receipt of a copy of the draft report, the then Acting Principal acknowledged that, in hindsight, suspension would have been a more appropriate punishment than stand downs, as it would have created more flexibility to alter the punishment in response to the Police investigation.

Complaint 5 - Prioritisation of perpetrators over victims

Complaint 5 was that the BOT prioritised the perpetrators' right to education over the victims' right to both education and personal safety.

The School's response was that the BOT had no capacity to make a decision on the perpetrators/students as they had not been suspended. It further responded that from the first day the School was aware of the incidents, steps were taken to remove the offenders from the school environment; that that was successful; and that there were no further incidents between the perpetrators and the victims.

The School further commented that it made and implemented plans for a phased reintroduction of the offenders in 2008, in consultation with the parent group and the Police. The victims were offered counselling within those planned meetings, and protected at the start of the school year by the following means:

- The School restricted the offenders to specified areas in the grounds
- The offenders were phased back into the School over a two week period, one beginning each day
- In addition to being on a daily report which monitored their classroom performance, the offenders were required to wait at the end of each day until the school grounds had cleared before they went home, and they were picked up by the parents/caregivers
- Male teacher aides were employed to supervise the offenders at intervals and lunchtime. Thus the offenders' movements were tightly controlled and monitored in order to guarantee the victims' rights to education and personal safety.

In addition, the entire School's lunch arrangements were altered to ensure the victims' safety. Lunchtime was shortened and staff duty supervision allocations were increased to an unprecedented level. The School stated that the staff made a huge and continuing effort to guarantee the victims' rights to education and personal safety.

To the extent that the decision to stand down rather than suspend or expel the students was part of a policy to keep students with behavioural problems within the School, it could be viewed as prioritising the rights of the perpetrators over the rights of the victims. However, the decision to stand down the perpetrators rather than suspend them has been discussed in detail in respect of Complaint 4. I do not consider this complaint adds to it significantly.

This complaint is not sustained.

I also record that the School did, after intervention by the MOE's Traumatic Incidents Team, take further commendable steps to ensure an orderly return to school of the perpetrators and protect the victims in the new year.

Complaint 6 - Failure to consult with Police after being advised that the assaults were serious

Complaint 6 was that the BOT failed to seek confirmation from the Police of the seriousness of the offending after being apprised of it by the parents on 26 January 2008.

The complainants have alleged that the parents disclosed, at a meeting on 26 January 2008, to two BOT members and three senior staff members, a detailed description of what the Police had told them had happened to their sons, emphasising the seriousness of the assaults. The parents advised that the Police had told them that they had admissions from the perpetrators in all but one case.

The School stated, in response to this part of the complaint, that the Police had indicated that the School did not (and does not) at any time seek to interfere with or pre-empt Police proceedings. It was not the BOT's role to seek confirmation of the seriousness of the offending, as the matter was being handled by the Police themselves. However, on completion of the Police investigation the BOT put the material before its solicitors to determine whether the punishments should be revisited.

I consider that, while some further details emerged from the Police interviews, the seriousness of the offending was largely apparent from the initial witness statements taken by the School. I do not consider the School to have had any particular requirement to contact the Police after its meeting with the parents on 26 January 2008.

Accordingly, this complaint is not sustained. As stated above, however, I consider that the School should have contacted the Police as soon as it learned of the incidents.

Complaint 7 - Failure to impose more serious sanctions after consultation with Police

Complaint 7 was that the School failed to impose more serious disciplinary sanctions either when the Police confirmed that serious Crimes Act assaults had been committed or when the School had the full Police file.

The School has advised that, at the parents' suggestion, it facilitated the provision of the investigation documentation to a solicitor to assess whether more serious punishments should be levelled against the perpetrators. The solicitor reviewed the material and advised the then Acting Principal who on the basis of the advice received did not think it appropriate to take further action against the perpetrators, as to do so would be "double jeopardy".

I consider that the School undertook an appropriate process (on the suggestion of parents) in consulting a lawyer to determine whether it was appropriate to take further action against the perpetrators. The School cannot be considered to have acted unreasonably in not taking further action against the perpetrators at that stage, given that it sought and followed the advice of the lawyer engaged by it on the matter. Additionally, I do not consider that the Police materials revealed anything substantive that was not before the School at the time the initial interviews were conducted by the School. The nature and scale of the offending was apparent from the outset.

This complaint is not sustained. However, this issue would obviously not have arisen had appropriate sanctions been imposed originally.

Complaint 8 - Failure to inform CYF of offending

Complaint 8 was that the then Chair of the BOT failed to inform CYF of the seriousness of the offending when the Police confirmed it on 3 February 2008.

The complainants say that at a meeting attended by the then Chair of the BOT and a senior staff member on 3 February 2008 the Police confirmed the accuracy of what the parents had told BOT members and staff at the meeting on 26 January 2008. The staff subsequently obtained a copy of the Police file so the School could see if there were grounds for a review of the disciplinary decisions. The complainants consider that after that meeting the School ought to have informed CYF of the seriousness of the offending.

The School's response was that the school management makes notifications to CYF, and that that is not the role of the BOT Chair. It stated that the School decided this was a matter which was more appropriately referred to the Police rather than CYF, and that it was the decision of the Police whether or not they deemed it appropriate to notify CYF.

As stated earlier, I consider that the School was at fault in not referring the matter to CYF or the Police at the outset. However, by 3 February 2008, the matter was clearly being investigated by the Police and, as the School states, the Police were responsible for liaising with CYF on the matter by that stage. Internal protocols between the Police and CYF govern the respective roles of each agency in cases of child abuse, including the sharing of information and allocation of tasks between agencies.

This complaint is not sustained.

Complaint 9 - Failure to inform Minister of Education or ERO of the seriousness of the offending

Complaint 9 is that the School informed neither the Minister of Education nor the Education Review Office of its knowledge of the seriousness of the offending, or that it had been advised by 3 February 2008 that in all but one case the offending had been admitted.

As stated above, at a meeting attended by the then Chair of the BOT and a senior staff member on 3 February 2008 the Police confirmed the accuracy of what the parents had told BOT members and staff at the 26 January 2008 meeting, and the staff subsequently obtained a copy of the Police file so the School could see if there were grounds for a review of the disciplinary decisions. The complainants consider that after that meeting the School should have contacted the Minister, the MOE, or ERO, to advise them of this information.

The response of the School was that the School was in close contact with the MOE, beginning with the formal notice of stand down, a copy of which goes to the Ministry.

It further stated that the MOE and ERO were aware that a Police investigation was proceeding. The Police had stated that charges were to be laid. The School's view was that it was not appropriate for it to interfere in any way with the Police investigation and decision making. Nor was it appropriate for the School to presume an outcome to the investigation and inform anyone of that. The School instead waited for the Police proceedings to run their course.

As remarked above, while certain details of the offending emerged through the Police interviews, the nature and scope of the offending had largely been apparent from the outset, and the onus was thus on the School to act properly upon the information at that time. I do not think that the School acted appropriately at that stage. But I do not see any additional obligation accruing to the School after 3 February 2008 to provide information to other agencies. It was reasonable to assume that those agencies were liaising with one another at that stage.

This complaint is not sustained.

Complaint 10 - Failure to correct ERO description of assaults as “chasing activity”

Complaint 10 is that the School, when given a copy of the ERO report to comment on, did not correct the description of incidents described in the ERO report as “chasing activity”. This was in spite of the fact that the School was aware at the most senior levels (BOT Chair and Acting Principal) that:

- The incidents were serious Crimes Act assaults including sexual assault, and
- There were 15 admitted assaults on 9 victims by 6 offenders over a period of days that had gone unobserved by staff and unreported by students.

The ERO Special Review Report, Hutt Valley High School, described the incidents as follows:

“ERO ascertained from interviews with staff and students that a group of students had been chasing members of their own group, and then others, around the school and allegedly assaulting them. This chasing activity had apparently persisted for about two weeks before the reported incidents.”

I consider that the term “chasing activity” was an unfortunate choice of words for ERO to use in the second sentence, and that on its own it understated the true situation. However, it was ERO’s term and I do not consider it to have required correction by the School, as it is clear from the first sentence that there were multiple incidents and that they included assaults.

This complaint is not sustained.

Complaint 11 - Minimising seriousness of events

Complaint 11 is that the then BOT’s decisions on communications to parents put concerns about the financial implications of bad publicity on international student enrolments and other less important matters ahead of the harm done to victims. The BOT, it is said, did so by making statements that minimised the seriousness of what happened and saying the School had acted reasonably and responsibly in the handling of the incidents.

Having studied all the materials and talked to the School I am of the view that the School did minimise the seriousness of the incidents, and that that was symptomatic of a culture that had developed whereby incidents of violence were understated. Whether the financial implications of bad publicity factored into the BOT’s decision making about this as suggested by the complainants it is impossible to say.

Examples of School minimising incidents

As discussed above, the School minimised the seriousness of the assaults from the outset by imposing inappropriately lenient punishments on the perpetrators, as well as failing to notify the parents of the victims.

Additionally, the incidents appeared to be underplayed in subsequent comments made by the then Acting Principal and then BOT Chair to the media. Specifically, in a 16 January 2008 media report the then Acting Principal is quoted as having stated that “it wasn’t an assault where somebody had blood spilt” and the then BOT Chair is quoted as stating she had “understood the assaults were minor, so they were not referred to the Board for disciplinary action”.

The School also minimised the seriousness of the incidents in its initial attitude to external agency involvement. The MOE records surrounding the incident suggest that the then Acting Principal initially queried the need for the MOE to become involved in the matter. The papers also suggest that the School was reluctant to cooperate with the Police in the initial stages of the Police investigation.

Although the School subsequently cooperated with both the Police and the MOE, its refusal in the new year to accept a Police offer to provide a Police presence on the school grounds again suggests that the seriousness of the incidents was not acknowledged by the School.

School’s attitude to incidents

In my first meeting with the School management it was suggested that the assaults were not particularly serious given that a decision was made to deal with the perpetrators by means of a Police Alternate Family Group Conference rather than prosecutions. However the Alternate Family Group Conference was undertaken on the basis that serious crimes had been committed, including multiple counts of assault with a weapon, as well as threatening behaviour, common assault and sexual violation by unlawful sexual connection, and that the failure of the perpetrators to meet various conditions would result in the matters being brought before the courts. I do not consider that this means of dealing with the perpetrators indicates that their actions were not viewed as being serious.

A further example of the School seeming to underplay the events was the suggestion it made to me in our first meeting that the Police officer who investigated the offences was on a “crusade”, and out to “make a name for himself”, when in fact his investigations confirmed the information that the School already had before it, that is, that there had been numerous incidents of serious pack assault committed by pupils on pupils on the school grounds. In this regard I note that the Police confirmed to me that the officer who obtained the witness statements was highly regarded for his investigative skills.

Conclusion on Complaint 11

This complaint is sustained.

Summing up and developments subsequent to the incidents

I consider that the incidents that occurred were part of a systemic problem of violence at Hutt Valley High School. While the School had taken steps to address these issues through the Eliminating Violence survey and the subsequent staff development programme, the School did not act on two clear themes which emerged: inadequate staff supervision of students and inadequate responses to violent incidents. Its decision to employ more activities in the lunch breaks, although laudable, addressed only part of the problem. The School should have responded to the situation by urgently reviewing its approach to addressing violent incidents and improving the supervision of students.

In addition to its inadequate response to the results of the Eliminating Violence survey, I consider that the School did not deal with December 2007 the incidents appropriately. They were not referred to the Police or CYF for investigation, they were not adequately punished, and the School took it upon itself to interpret medical information in favour of the perpetrators. Victims' parents were not told by the School that their children had been assaulted.

To that end, I consider the School's blanket statement that it acted reasonably and responsibly in response to the assaults to be inaccurate and deficient.

However, I consider that, while the School did subsequently continue to understate the 2007 incidents, it has nevertheless since been very proactive to address issues of bullying and violence at the School. In addition to reviewing all relevant school policies and implementing a buddy system for teacher duty, it has actively engaged with the "Rock and Water Programme". The programme is designed to address issues of school violence and bullying. The focus of the course is to develop confidence among students to deal with power responsibly and to avoid and defuse situations of violence. In June 2008 one day workshops were offered to groups of boys and girls. Several Year 9 classes also participated in a six week programme (two times per week). Twelve further staff attended a three day Rock and Water workshop during 2008. The programme has since been broadened and linked in with a Student Engagement Initiative that the School has been involved in via the MOE, which also works to embed restorative practices within school systems.

During 2009-2010 the School has further developed the Rock and Water programme. The Physical Education Department incorporates the skills and philosophy in its junior programme and the School runs an introductory programme for all year 9 classes within their first week of school. There are ongoing workshops offered for targeted groups and form classes. Staff have also been involved in internal programme development. In 2010 a 10 week course was run for 1 hour a week. Additionally, in 2011 the entire staff undertook two days of professional development in restorative practices. A restorative practices coordinator has been appointed who is working with a group of 28 staff to introduce and embed a broad set of restorative practices within the School.

The School has made a serious effort to address bullying through other measures. In June 2008 parents, staff and the Police set up a safety advisory group with student representation, with the goal of reviewing all aspects of school administration for safety, including a school-wide survey on bullying, mediation training for senior students, and anti-bullying posters displayed in every class room and around the School.

Comments by the School in course of investigation

I consider it appropriate to acknowledge the open and constructive approach of the current Chair of the BOT and the Principal to this investigation. The School made the following generic comments and undertakings in response to my draft findings:

- School policies at the time did not assist the then Acting Principal to make the correct decision – a decision that would have referred the assaults to the appropriate authorities for a thorough investigation;
- Procedures were also inadequate to ensure that the interests of the victims were paramount;
- In addition, it is clear that an incorrect judgment call was made as to the severity of the assaults. This led to the stand-down (rather than suspension) of the alleged perpetrators;
- We welcome the Ombudsman's desire to encourage stronger guidelines to assist schools and other agencies;
- The School will be unreservedly apologising to the victims of the 2007 assaults for the mistakes made and the inadequacy of our processes and procedures at the time. The School did not give the victims the support they required.

Additionally, the then Chair of the BOT, after viewing the draft report, while acknowledging that the assaults did take place and were more serious than originally assessed, accepted that "the failure to correctly assess the seriousness of the assaults led to further difficulties", and that "the actions of the School were not reasonable and responsible and the use of this phrase in a school newsletter would have caused unnecessary distress to parents and victims". She apologised for her contribution to any resultant distress.

As stated above, the then Acting Principal has now also personally acknowledged that he ought to have suspended rather than stood down the students involved.

COMPLAINTS AGAINST THE EDUCATION REVIEW OFFICE

The complaints against the Education Review Office are as follows:

1. ERO failed to properly assess the safety of the School in its regular reporting
2. ERO failed to contact the Police before writing its special report subsequent to the 15 incidents of assault
3. ERO produced a factually inaccurate report which failed to properly assess the relevant safety issues.

The complainant believes that as a result of these actions, the media reported that the School had been “cleared” by ERO, causing harm to victims and parents.

Complaint 1: Failure to properly assess safety in regular reporting

Complaint 1 is that ERO failed to properly assess the safety of the School in its regular reporting.

Background

ERO undertook a review of the School as part of its regular reporting in May 2006.

The report stated:

“During the review, ERO checked the following items because they have a potentially high impact on student’s achievement:

- Emotional safety of students (including prevention of bullying and sexual harassment);
- Physical safety of students
- Teacher registration
- Stand downs, suspensions, expulsions and exclusions; and
- Attendance.

During the course of the review, ERO identified areas of non-compliance. No issues relating to safety were identified.”

ERO’s comments

ERO’s response to this complaint was that the focus of the review was on the quality and use of assessment for teaching and learning. It stated that the BOT had attested in the Board Assurance Statement and Self Audit Checklist that it had taken all reasonable steps to meet its legislative obligations related, among other things, to ‘management of health, safety and welfare of students and staff’. It noted that during the review the latter was one of the items checked by review officers, as for all schools, because it has a potentially high impact on student achievement. ERO concluded that there were no issues relating to safety.

ERO summed up its response by stating that it is not clear how the complainant could conclude that ERO had failed to properly assess the safety of the School in its regular reporting, as ERO had followed its standard procedures in carrying out the review as outlined above, which is a robust process and carried out by “suitably qualified persons” designated by the Chief Review Officer under section 326 of the Education Act 1989.

Analysis of materials

ERO’s processes for reviewing schools, as set out in Chapter 5A of the Manual of Standard Procedures for school reviews, provide as follows:

“Checking specific areas of compliance:

Some compliance items are checked on all reviews where the Board Assurance Statement and Self Audit Checklist is used. These items are checked because they have a potentially high impact on student achievement, safety and wellbeing but are otherwise unlikely to be a focus area of the review.

ERO will always check elements related to:

- Emotional safety of students
- Physical safety of students ...
- Stand downs, suspensions, expulsions and exclusions.”

Material that emerged during the review

Having viewed the materials collected by ERO in its 2006 review of the School, I am of the view that there were certain materials that indicated possible issues with safety at the school.

The relevant materials are a combination of comments from pupils and statistics on stand downs for violence.

In an interview with a group of Maori students the following was recorded by the reviewing officer:

“bullying – safety – no! physical scraps (4 fights in 1 week) – not a fair system”

“Scraps every day – nothing done – stand downs for two days after fighting”

”**Physical safety = X** – 4 fights in one week”.

Similarly, in an interview with junior students the following was noted:

“Short year 9s say they are being bullied ... do not tell teachers/counsellors”

“smoking, fights, not much happens get away with it. Depends on who hang out with”.

Additionally, junior students stated “some teachers don’t want to hear” about bullying.

In addition to the material about fights and bullying, the School had a significantly higher number of stand downs compared to the national average for schools of the same decile and type in the period of review. In 2006 there were 67.4 stand downs per 1000 students, compared to a 40.7 national average for schools of the same type and decile; with an even greater disparity in 2005 of 77.2 compared to a national average of 42.4. The School's records indicated that a high number of those stand downs were for physical assaults on other students.

ERO pointed out that in addition to the materials cited above suggesting safety concerns, there was other general material gathered that suggested the School was safe. While I accept there were several general references to the School being safe among the data gathered by the assessors, those comments were from different groups (seniors and Pacific Islanders), and were not of themselves cause to dismiss the specific reports from junior and Maori students of bullying and frequent fights at the School.

ERO also pointed out that while stand downs in the School were higher than average for school type and decile, suspensions were comparable. In my view this is corroborative of a possible problem. One might have expected a similar proportionate above-average use of suspensions as for stand downs. Yet there is no correlation between the use of stand-downs (high compared to other schools) and that of suspensions (average). This could suggest that stand-downs were being over-used or that suspensions were being under-used. Either way some explanation is called for. This apparent anomaly was not referenced in the report.

Conclusion on Complaint 1

In my view the above factors suggested that there were some issues with bullying and safety that ought to have been followed up by ERO and identified in the report. The statement that there were "no safety issues" in a school with a high number of stand downs for violence, and in which some pupils have reported near daily fights and inadequate responses by the school does not in my view accurately summarise the range of material gathered by the assessors.

This complaint is sustained.

Complaint 2 - Failure to contact Police

Complaint 2 was that ERO failed to contact the Police before writing its special report subsequent to the 15 incidents of assault.

Background

Following the December 2007 incidents, ERO undertook a Special Review Report of Hutt Valley High School. The terms of reference of the report were as follows:

"This special review is an evaluation of the performance of the Hutt Valley High School Board of Trustees and management in relation to the extent to which Hutt Valley High School provides students with a safe emotional and physical environment".

The review

The review was prefaced as followed:

“ERO decided to carry out this special review of Hutt Valley High School because of concerns expressed through the media and to the Ministry of Education about student safety. These concerns arose following reporting of abusing incidents among Year 9 students in the school grounds during school hours in December 2007.

ERO did not investigate the incidents themselves as, at the time of the review, they had been referred to the New Zealand Police. Since then the Youth Aid Section of the Lower Hutt Police has addressed them accordingly. In this review ERO’s focus is on whether the school is a safe environment for the more than 1700 students currently enrolled.”

ERO’s comments

ERO made the following comments in response to the complaint:

“... ERO did not investigate the incidents themselves as at the time of the special review the incidents had been referred to the New Zealand Police, and the Youth Aid section of the Lower Hutt Police was addressing them. ERO’s focus was on whether the school is a safe environment for the more than 1700 students.”

ERO also suggested that it would have been inappropriate for it to have talked to the Police as, at the time of the review, investigations were underway, and it “might have been regarded as in some way interfering with the Police investigations.”

Conclusion on Complaint 2

I do not consider that ERO was under an obligation to contact the Police prior to preparing the report. It made it clear in the report that its focus was not to investigate the incidents themselves, but rather to look at the general issue of safety in the School. Furthermore, ERO would have had access to the School’s interviews in respect of the incidents, and indeed the witnesses themselves, and therefore did not need to obtain information about the assaults from the Police.

This complaint is not sustained.

Complaint 3 - Failure to properly assess safety issues

Complaint 3 was that ERO produced a factually inaccurate report which failed to properly assess the relevant safety issues.

ERO made a number of findings about the School, summarising the situation as follows:

“Students and staff spoken to by ERO, and parents and past students who contacted ERO during the course of the review, created an overall picture of a positive and settled school.

It is difficult for ERO or, in fact, any school board of trustees to provide long-term assurance that a school is “safe”. All schools need to be vigilant about developing, reviewing and maintaining an environment that is safe for all students. For a time in December 2007, this school was not a safe place for some students. Since then the board and staff have made positive efforts to provide a safe school for all students.”

The report identified areas for improvement in student health and safety and on teaching students about attitudes and behaviour that promote student wellbeing and a safe positive school environment, stating, “the board, senior managers and staff of Hutt Valley High School now have important work to do on further development of [those policies]”.

In response to this complaint, ERO stated:

“It is ERO’s view that the confirmed report is a ‘balanced report’, citing as it does areas of good performance, areas for improvement, areas of progress and recommending areas for further improvement. The report is not “factually inaccurate” ...”.

It also emphasised that its role was to assess the safety of the School at the time of its report and not at the time of the incidents. However, while there was a time lag between the incidents and ERO’s site visit, this was due to the intervening school holidays. The incidents occurred less than two weeks prior to the end of the school year and ERO’s site visit was in the second week of the new year. There were therefore fewer than three school weeks separating the incidents from the review. Accordingly, it was not appropriate to treat the incidents and the assessment as being separate in time and context.

I do not consider the report produced by ERO to have been factually inaccurate. I do, however, consider that it did not fully reflect the context of the December 2007 incidents, and this had the effect of casting a more favourable light on the overall safety of the School than was warranted.

First, the ERO report did not report on the result of the Eliminating Violence survey or its follow up sufficiently comprehensively. In spite of devoting six paragraphs to the results of the survey, it failed to reference the most concerning statistic that emerged from the Eliminating Violence survey, namely the high number of students who had been hit or kicked in the last 24 hours (including a quarter of all boys in the School). That statistic suggested an unacceptable level of violence in the School and was therefore of central relevance to safety at the School. Instead, the less concerning statistics that a third of children had been sworn at and a third been pushed or shoved was reported, the latter being explained away as resulting from congested corridors.

Second, the School was described as having “in the last 12 months or so ... been proactive in considering safety issues through undertaking the Eliminating Violence survey, gaining confidential and useful information about safety issues, and working towards addressing them through teacher professional development”, in spite of it having failed to adequately follow up on the survey. As discussed above, the professional training days, in themselves, did not provide the solution to the issues identified, and required comprehensive follow up to implement solutions suggested. This did not occur (and indeed ERO’s assessor’s notes alluded to problems in follow up of the survey, stating “E[liminating] V[iolence] implementation - no actual documented plan”). While more activities were provided for lunch breaks, there appear to have been no amendments to the School’s approach to disciplining pupils or supervision of students in the seven months between the training days and the December 2007 incidents. This was in spite of the clear theme that emerged that these matters needed to be urgently addressed.

The statement as to the School's proactivity in the area of safety, devoid of the relevant context, is misleading.

Third, the report did not discuss the comparatively high number of stand-downs for violent behaviour, or analyse the School's policy and practice on student discipline, despite the obvious link between procedures for student discipline and student behaviour, and ERO's policies that suspensions and stand downs are to be checked in all ERO assessments (even where the focus of the report is other than safety).

ERO acknowledges that the report "did not draw a causal link between the school's systems and processes and the events of late 2007". However, it considers that this did not render the report "factually inaccurate". As stated above, I accept that the report was not factually inaccurate as such. However the above factors combined to create an incomplete, and overly favourable picture of safety in the School in the lead up to the incidents.

This complaint is sustained in part.

COMPLAINTS AGAINST THE MINISTRY OF SOCIAL DEVELOPMENT

The complaints against the Ministry of Social Development are as follows:

1. CYF relied on a CYF employee, Susan Pilbrow, for information about the 15 incidents of assault, until the time of the meeting with the Police in April 2008, given that Ms Pilbrow had a conflict of interest as the Chair of the Board of Trustees.
2. CYF failed to involve itself with the victims and their families after it became aware of the assaults.
3. CYF held a meeting with the Police without any parent representation just prior to the Ministry mediated meeting with parents.
4. CYF stated in the records of the incident that “bullying and child abuse are two separate issues”.

Complaint 1 - Reliance on employee with conflict of interest for information about the assaults

Complaint 1 against the MSD was that CYF relied on a CYF employee Susan Pilbrow, for information about the 15 incidents of assault, until the time of the meeting with the Police in April 2008, given that Ms Pilbrow had a conflict of interest as the Chair of the Board of Trustees.

Ms Pilbrow was the Supervisor of the Lower Hutt CYF office as well as the Chair of the BOT.

MSD response to Complaint 1

The MSD initially responded to Complaint 1 by stating that it is unclear why the complainant considered that CYF relied on Susan Pilbrow for information on the assaults. It stated that CYF became aware of the incidents of assault during a telephone call on 14 January 2008 between the Child Abuse Team/Sexual Abuse Team (CAT/SAT) liaison staff member and her Police equivalent. Susan Pilbrow was not the CAT/SAT liaison person but the Supervisor at the Lower Hutt CYF site. It advised that:

“Ms Pilbrow’s position as Board Chair was already known to Child, Youth and Family and she and her immediate manager had agreed that her two roles could and should be kept separate. On 16 January, after the incidents at Hutt Valley School became public, Ms Pilbrow identified this as a potential conflict of interest. To manage this, had any notifications been made to Child, Youth and Family, the cases would have been managed by another office”.

The MSD further advised that:

“Child, Youth and Family sought information through its Greater Wellington Service Centre about the incidents of assault when it required information for briefing or other purposes. [The Operations Manager], met with the Police to discuss the matter. As stated above, no information was required to fulfil its statutory functions, as no notification or youth justice referrals were received.”

MSD's conflict of interest policy

The Child Youth and Family Code of Conduct applicable at the time included a section on conflicts of interest. The relevant section stated as follows:

"You must inform Child, Youth and Family if you are involved in, or have a personal or financial interest or commitment to, any activity that may conflict, or could be seen by others to conflict, with the performance of your duties and the goals of the Department.

You must inform Child, Youth and Family if you are a member (or plan to become a member of) or have a family involvement in a trust or community organisation which is funded by or otherwise linked to the Department."

In addition to the CYF code of conduct, the MSD policy for addressing conflicts of interests, entitled Conflicts of Values, Interests and Politics Policy, was adopted by CYF after the 2006 merger with the MSD in the absence of any stand alone conflict of interest policy.

An attachment to the policy gave detailed guidance as to conflicts of interest and how they were to be managed.

Key elements of the publication were for managers to:

1. Identify the conflict of interest.
2. Consider its possible impacts on the work group and on the staff member.
3. Discuss the conflict and its scope with the staff member and agree to a process for managing the conflict. Record the discussion in writing and put it on the staff member's personal file.
4. Review progress of the conflict.

Analysis of materials

Ms Pilbrow adhered to the Child Youth and Family Code of Conduct by declaring her conflict of interest as soon as the MSD became aware of the incidents. However, it does not seem to me that CYF itself adhered to the Conflicts of Values, Interests and Politics Policy. The scope of the conflict of interest was not properly defined in terms of items 1 and 2 of the policy. Nor does there appear to have been a process agreed to in writing with Ms Pilbrow for managing the conflict in accordance with item 3 of the policy, or any review of the progress of the conflict in terms of item 4.

Scope of the conflict

In an email dated 16 January 2008 from the Lower Hutt Site Manager to senior managers about the incidents, the Site Manager advised that she had "identified potential conflict of interest as Susan Pilbrow is the chairperson of the BOT". She further advised that she "will deal with any follow up" and "keep Susan separate". The scope of the conflict was not referenced, but the inference was that Ms Pilbrow would be kept separate from all departmental dealings with the incidents. In the event it appears to me that this did not happen.

In a subsequent communication the MSD redefined the scope of the conflict of interest as only existing in the event that there were formal referrals to the youth justice system made by the Police to CYF. On 7 April 2008, in a briefing to the Deputy Chief Executive it was stated, under the heading of Potential Conflict of Interest, "Only if referrals had been made to Child, Youth and Family, and then only if Susan had direct influence on the outcome of any Child Youth and Family involvement, could her Chairperson role have been a potential conflict of interest".

The MSD argued in response to my notification of the complaint to it, that "at the time of the incidents in 2007 ... Child Youth and Family would have been acting outside its legislative authority if it had involved itself or offered assistance without any notification from a third party". Its position was that in the absence of a formal referral or notification by a third party under the Children, Young Persons, and Their Families Act it was legally precluded from becoming involved, in spite of the fact that the abuse had come to its attention. The MSD maintained that for this reason Ms Pilbrow did not have a conflict of interest (in spite of such a conflict having been identified at the time of the assaults in the email correspondence).

The MSD suggested that the position would be different if abuse came to its attention now. It stated that: "in 2009, following the amendment of the Children, Young Persons and Their Families Act, Child, Youth and Family introduced the Differential Response model", and that "Child, Youth and Family can now respond to reports that are below the threshold of a formal notification, including reports received via sources like the media. Reports of concern now may include incidents such as the one at Hutt Valley High School. In the absence of a formal notification, Child, Youth and Family could now refer such an incident to community services for support or monitoring. It is now also in a position to proactively take action and conduct a child and family assessment or escalate the incident to a full statutory investigation or a combination of the above."

When asked to identify the legislative amendment that resulted in this significant change to its powers in 2009, the MSD was unable to do so. Instead, it retracted and apologised for its advice, stating that the "assertion in [MSD's] letter is incorrect" and that there was no legislative change at the time. Thus, contrary to the MSD's initial advice, it accepted that there was in fact no legal impediment to it becoming involved at the time of the incidents.

The fact that the MSD could indeed offer support in the absence of a formal notification or referral is borne out by its actions at the time, namely an offer to the Police of assistance with the assaults in a meeting on 8 April 2008 after an escalation of media interest. In an initial letter to me, the MSD advised that non-statutory assistance was offered at the meeting. It advised: "Where Child, Youth and Family might be able to assist in a non-statutory role, offers of assistance can be made. In this instance the Wellington Operations manager offered to provide support to the Police, who were leading the investigation, but the Police did not think this assistance was required." However, when it was pointed out that the offer of assistance to the Police demonstrated that the MSD did not need a formal notification or referral to assist (and therefore that Ms Pilbrow did have a conflict of interest) the MSD maintained that CYF only offered Police support at the meeting on the basis that "the Police might intend to notify or refer the matter", and apologised for the confusion surrounding its previous advice.

However, the documentation surrounding the 8 April 2008 meeting between the Police and CYF, including an email dated 9 April 2008 reporting on the meeting, makes no reference to the support offered by CYF to the Police being contingent on a formal notification or referral. Thus, in the email of 9 April 2008 reporting on the meeting, the Operations Manager stated: “we offered to help out in any area that the police thought may be useful but they did not think this was required”. This is consistent with the MSD’s initial advice that assistance was offered at the meeting, and with the absence of any legal impediment to doing so.

In sum, I find that an offer of support was legally available to CYF and, contrary to the MSD’s most recent communication, was in fact offered at the meeting with the Police on 8 April 2008.

As Ms Pilbrow had the ability to influence departmental thinking in respect of what assistance the MSD would offer the Police or the victims, the conflict of interest extended to all departmental dealings with the incidents, and not just departmental dealings in the event that there was a statutory notification or a referral. This should have been explicitly identified from the outset by CYF, and a process for managing the potential conflict recorded in writing and reviewed in accordance with the MSD policy. Ms Pilbrow should subsequently have been kept totally separate in her capacity as an employee and not used as a source of information about the incidents.

Management of the conflict

As noted above, in the email dated 16 January 2008 in which the Lower Hutt Site Manager identified Ms Pilbrow’s conflict of interest, it is stated that she will “keep Susan separate”. However, this did not happen. Information sourced from Ms Pilbrow was referenced in that email and in subsequent Ministry documents relating to the issue.

The purpose of the 16 January 2008 email was to give a “heads up” about a front page article in the Dominion Post concerning the incidents at Hutt Valley High School. In spite of identifying the conflict of interest with Ms Pilbrow and advising that she would be kept separate, the Lower Hutt Site Manager said that they (the Site Office) had “inside knowledge” then quoted information apparently sourced from, but not attributed to, Ms Pilbrow. The email stated, “it appears to be the new head of CIB out to make a name for himself and the incidents are not as they appear”. The reference to CYF having “inside knowledge” appears to be a reference to Ms Pilbrow, an employee, also being Chair of the BOT of the School.

The MSD disputes that the “inside knowledge” reference in the email related to material sourced from Ms Pilbrow. It suggests instead that the reference was to information sourced from the Police. However, it seems most unlikely that CYF would refer to information derived from an external agency as being “inside information”. Moreover, it is improbable to the point of absurdity that the Police would advise CYF that its own investigation into the abuses was simply “the new head of CIB out to make a name for himself”. That statement, purporting to dismiss the need for a police investigation, mirrors comments made by the School management in its meeting with me (which are discussed earlier in the report in the context of Complaint 11 against the School). The obvious inference from the email and other documentation is that it is sourced from Ms Pilbrow.

I consider that Ms Pilbrow continued to be used by CYF as a source of authoritative information on the School incidents. Ms Pilbrow is quoted in a briefing to the Minister of Social Development on 16 January 2008 (written on request by the Minister after the newspaper article) as contradicting the material given by the Police in relation to the incident. The briefing noted:

“The Hutt Team Leader, Susan Pilbrow advised the Site Manager of the police investigation as she is the Board of Trustee’s Chair. She was able to advise that the investigation related to an incident of bullying in early December which was dealt with by the School at the time. The information reported above by police [that a boy had been held down by force and had a screw driver pushed into his anus] was not the information given to the School. The young person was seen by a Doctor who confirms there was no sexual violation. The young person was poked by a screwdriver over his clothing and was extremely upset at the time.”

This briefing, inappropriately in my view, draws on Ms Pilbrow’s position as both Hutt Team Leader and Chair of the BOT. As a result of the MSD allowing these roles to merge, Ms Pilbrow’s perspective on the facts was taken at face value and afforded undue weight. As noted above, the medical report cited in this briefing as contradicting the most serious assault could not reasonably be interpreted as disproving the assault and appears not to have conformed with CYF guidelines about obtaining medical evidence in situations of suspected child abuse, which require examinations to be performed by a specialist medical practitioner. There is no evidence that CYF sought a copy of the medical report to confirm Ms Pilbrow’s advice, as one would have expected the MSD to have done had Ms Pilbrow not been a Ministry employee. Ms Pilbrow’s statement as to the situation is accepted in the briefing as allaying any concern.

I do not question Ms Pilbrow’s right as Chair of the BOT to put her views forward. But it was for the Ministry to ensure that Ms Pilbrow’s position as an employee did not influence the views that it formed on what was an external matter. It was not appropriate for the Ministry to treat Ms Pilbrow as an inside source of knowledge or to give her views any particular weight because she happened to be employed by it. Yet it did treat her as a source of inside knowledge and the information and views she provided appear to have made an important, indeed determinative, contribution to the course of action it adopted.

Consequently, I find that the MSD failed to adhere to its own conflict of interest policy, and did not properly manage Ms Pilbrow’s conflict of interest. In managing a conflict of interest it is not enough merely to acknowledge that a conflict exists (although that is an essential start). Positive steps must be taken to ensure that the conflict does not influence future actions. It is likely that CYF’s decision not to make an offer of assistance to the Police until 8 April 2008 (after further media interest in the matter), was influenced by material sourced from Ms Pilbrow which contradicted advice from the Police as to the severity of the assaults, and which was given undue weight on account of her position as a senior CYF employee.

This complaint is sustained.

Complaint 2 - Failure to assist victims

Complaint 2 was that CYF failed to involve itself with the victims and their families after it became aware of the assaults.

MSD response to Complaint 2

MSD responded to Complaint 2 by stating:

“CYF requires either a care and protection notification or a referral to the Youth Justice system before it can make a statutory intervention with a child or young person. In this matter, neither a care and protection notification nor a youth justice referral was received. Where Child, Youth and Family might be able to assist in a non-statutory role, offers of assistance can be made. In this instance, the Wellington Operations manager offered to provide support to the Police, who were leading the investigation, but the Police did not think this assistance was required.”

Analysis

I accept that in the absence of a care and protection notification, or a youth justice referral, there was no statutory requirement for CYF to become involved.

In the absence of any direct request from the Police, I consider that whether the MSD offered assistance to the Police was a matter of discretion on the part of CYF. The decision not to offer the Police assistance for three months appears however to have been influenced by material sourced from Ms Pilbrow purporting to contradict the material from the Police, and was given undue weight on account of her position in CYF. The reasons for this conclusion have been discussed above in regard to Complaint 1. I therefore consider that CYF's discretion as to whether it should offer assistance was improperly exercised.

This complaint is sustained in part.

Complaint 3 - Holding a meeting with Police without parent representation

Complaint 3 relates to “CYF's decision to hold a meeting with the Police without any parent representation just prior to the Ministry mediated meeting with parents”.

MSD response

The MSD responded to this complaint as follows:

“Chris Harvey, Operations Manager, and Sue Colville, Site Manager, met with the Police on 8 April 2008 to discuss the separate roles of the Police and Child, Youth and Family concerning the investigation, with a particular focus on media releases and media comment. The meeting was requested in part because of comment in the media about young people being referred for family group conferences, which inferred Child, Youth and Family had involvement with the Hutt Valley High School incidents. Child Youth and Family wished to ensure that future media comment was accurate. Mr Harvey also offered Child, Youth and Family support to the Police, but the Police did not believe this was required. Since the primary focus of the meeting concerned internal operational matters between Police and Child, Youth and Family, parent representation was not required.”

Analysis

It is not clear from the complaint precisely why the MSD is considered to be at fault for holding a meeting at this stage and I have seen nothing that suggests that this is the case. I do not consider that the MSD acted unreasonably in holding a meeting just prior to the Ministry mediated meeting with the parents. I accept the MSD’s explanation as to the purpose of the meeting, which did not require a parent presence.

This complaint is not sustained.

Complaint 4 - Statement that bullying and child abuse are separate issues

Complaint 4 relates to CYF’s statement in the records of the incident that “bullying and child abuse are two separate issues”.

Background

In a briefing dated 7 April 2008 from the General Manager, Operations, to the Deputy Chief Executive, the following statement was made:

“Bullying and child abuse are two separate issues. In this case, violence between peers, which may have reached the level of assault, is dealt with initially by Police, who make the decision about whether to deal with the matter through a Police warning, refer for a Youth Justice family Group Conference, or arrest the young person and lay the matter in Court”. (emphasis added)

MSD comments

The MSD's comments about this part of the complaint were as follows:

"Child Youth and Family operate under the Children, Young Persons and Their Families Act 1989. This statute contains the following definition of child abuse – child abuse means the harming (whether physically, emotionally or sexually), ill treatment, abuse, neglect, or deprivation of any child or young person. Bullying can take place between adults, between an adult and a child, or between children. Bullying was, in this case, violence between peers and was dealt with by the Police who were in a position to make the decision whether to issue a warning, refer for a Youth Justice Family Group Conference or arrest a young person or persons to be considered by a Court. As Child Youth and Family did not investigate this incident, it cannot make a judgment about what took place."

Analysis

It is clear that there is an overlap between bullying and child abuse. The definition of child abuse as cited above is silent as to the age of the perpetrator, focusing instead on the harm to the child. Bullying which harms a child physically, emotionally, or sexually is prima facie child abuse for the purposes of the Children, Young Persons and Their Families Act. Protocols written by CYF make it clear that peer on peer abuse can amount to child abuse (Part 1-12 to 1-14 of the Interagency Protocols for Child Abuse Management (1996) provides specific Guidelines to schools for responding to allegations of peer sexual abuse).

Thus it was not entirely accurate for the briefing to suggest that bullying was a separate issue from child abuse.

However, in its context the statement was made as background to the usual procedure in respect of incidents of violence in the School's grounds, that is, that such incidents were responded to initially by the Police. It was not made in a legal document and did not otherwise affect the accuracy of the matters discussed in the briefing. I therefore do not consider the sentence, of itself, and in context, to be an unreasonable description of the position.

This complaint is not sustained.

SUGGESTIONS FOR POLICY CHANGES

Amendment to National Administration Guideline 5

Seven months prior to the incidents, ERO had recommended, through its May 2007 “Safe Schools, Strategies to Prevent Bullying” publication, that schools develop anti-bullying procedures and policies. The School appears not to have implemented the recommendation, as it did not have any targeted anti-bullying programmes or policies. It has, however, now remedied that deficit and has an effective anti-bullying programme.

In the event that there had been a mandatory obligation on the School to implement an anti-bullying programme, the events that occurred in December 2007 are less likely to have happened. I therefore consider that the national framework needs to be strengthened, and that it should be compulsory for all schools to implement an anti-bullying programme.

In my view the most appropriate vehicle for effecting this change is an amendment to NAG 5, gazetted by the Minister of Education pursuant to section 60A(1)(c) of the Education Act. NAG 5 currently requires schools to provide a safe physical and emotional environment for schools. An obligation on schools to have an effective anti-bullying programme would complement that part of the guideline through requiring schools to take concrete measures to achieve that outcome.

I suggest that NAG 5 be amended to require each board of trustees to implement an effective anti-bullying programme. Inclusion of the requirement in the NAG emphasises the pivotal importance of student safety in this area.

Monitoring of the anti-bullying policies would continue to be undertaken by ERO in accordance with its procedures as set out in the May 2007 publication. This includes requiring schools to:

- Monitor incidents of bullying
- Develop, update or review anti-bullying policies and procedures
- Include in existing policies ways to deal with text bullying
- Report self-review findings to the board of trustees and wider school community
- Provide professional development for teachers related to particular anti-bullying programmes or strategies
- Implement or extend anti-bullying programmes for students, and
- Offer workshops and support for parents.

I also note that the MOE website has very useful resources for schools in developing anti-bullying policies. These resources would assist those schools which have not yet introduced anti-bullying programmes to implement the revised NAG.

Guidance for schools on discipline

To complement the requirement for mandatory anti-bullying programmes, I consider that schools should be given more specific guidance on the levels of punishment that should be given for various infringements. This is because the situation at Hutt Valley High School demonstrates that the lack of appropriate sanctions can contribute to and risk normalisation of a culture of violence.

Currently section 14 of the Education Act provides identical statutory criteria for stand down and suspension. Students can be stood down or suspended from school if the Principal:

“... is satisfied on reasonable grounds that –

- a. the student’s gross misconduct or continual disobedience is a harmful or dangerous example to other students at the school; or
- b. because of the student’s behaviour, it is likely that the student, or other students at the school, will be seriously harmed if the student is not stood-down or suspended”.

While both the Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999 and the 2009 Guidelines for Principals and Boards of Trustees on stand downs, suspensions, exclusions and expulsions set out the different processes to be used in suspension or stand down, neither provide guidance on the types of situations which would warrant invoking either of these powers. In this absence, individual schools may adopt their own guidance for their principals.

The Ministry of Education believes that the current lack of prescription is appropriate because each case needs to be considered in terms of a number of factors specific to the incident. While I agree that a rigid national template for school discipline would have little merit, I consider that the current entirely discretionary system risks producing arbitrary disciplinary outcomes both between and within schools, such as that experienced in the present case. Accordingly, I consider it would be appropriate for the Ministry’s guidelines to provide more specific guidance for schools as to the types of situations which would attract each penalty (albeit with the necessary discretion to take into account individual circumstances).

The guidance should include advice that serious or repeat violent offences are likely to result in exclusion to ensure safety in the school for other students, but always with an obligation on the school to strive to implement an effective programme for such students in an endeavour to keep them within the school system while ensuring the safety of other students.

Such guidance would enhance consistency between schools, provide greater certainty for students and staff, make comparisons between schools of the use of these powers more accurate, and avoid situations of systemic under-punishment contributing to safety issues at schools.

Additionally, principals should be advised that a stand down is appropriate only when inquiries into the infringements are complete at the time of the decision to stand down, and there is no information likely to come to light that could necessitate extending the period the pupil is away from school. In this way an appropriate penalty would be imposed, rather than the penalty, after further examination of the incident, proving to be inadequate.

Inclusion of victims’ views in disciplining decisions

I also consider the present disciplinary procedures could be improved by requiring principals and Boards of Trustees to consider the views of victims when making decisions on discipline, when the infringement at issue is bullying or violence. The presence or absence of particular individuals in a school at a given time can directly affect the safety, sense of wellbeing and educational opportunities for students who have been victimised. The inclusion of the views of victims in the process would enhance the compliance of disciplinary procedures with modern community conceptions of justice, as well as the principles of natural justice, by ensuring input into the decision by all affected parties.

Victims could be given the opportunity either to contribute to a written “victim impact statement”, or to attend Board suspension hearings.

CHRONOLOGY

2006

22 May – ERO produced a report on the School. The focus of the report was on “the use of assessment for teaching and learning across the school”. The report concluded that “no issues of safety were identified”.

2007

March – The School conducts an Eliminating Violence survey. A quarter of boys say they have been kicked or hit in the last 24 hours, and half of teachers say they have been bullied or harassed by students.

April – The School holds two teacher only days to discuss a response to the Eliminating Violence survey.

7 December (Friday) – A male pupil reported having been subjected to a pack anal assault by a group of boys. Teachers and the then Acting Principal conduct interviews with 8 boys. A number of boys admitted to jointly committing anal assaults on named pupils with objects. One perpetrator named 17 victims, some of whom were members of the perpetrator group. Telephone calls were made to the parents of persons identified as perpetrators.

9 December (Sunday) – The mother of Pupil C emailed the School advising that her son had been subjected to a number of pack anal assaults in the past two weeks with various objects including a drill bit, scissors, a craft knife, a plank of wood, a shoe and a cell phone, including a penetrative assault with a screw driver.

10 December (Monday) - Pupil C and his mother meet with a teacher. Pupil C is examined by a doctor who writes a report. Mother of Pupil C reports his assault to the Police. Pupils A and B are interviewed by staff and refer to serious assaults. Statements are taken from a number of alleged perpetrators. Three boys are given five day stand downs.

11 and 12 December - The then Acting Principal carries out further interviews with four boys. It is revealed that a series of pack anal assaults with objects have been occurring over a two week period.

12 December (Wednesday) - Three further boys given three-day stand downs.

17 December (Monday) - Police contact the School asking that all material from the School about the incidents be faxed to them.

18 December (Tuesday) - Last day of school term.

20 December (Thursday) - Police take a 15 page statement from Pupil C.

21 December (Friday) - Police contact the MOE and advise it of the incidents. The MOE contacts the School. Police seek information from the School on the incidents. A further medical report is obtained by Pupil C.

CHRONOLOGY

2008

14 January - Police advise the CYF Child Abuse Team/Sexual Abuse Team liaison officer of the incidents.

15 January - The Police commence interviews with alleged perpetrators.

The Police issue a press release about the incidents and say five boys will be referred to the Family Court and one boy will be referred to the Youth Court.

16 January - The Dominion Post and Stuff run stories about the assaults.

The then BOT Chair is quoted as stating she had “understood the assaults were minor, so they were not referred to the Board for disciplinary action”. The then Acting Principal is quoted as saying “he had no regrets about how he handled the assaults”, and that “it wasn’t an assault where somebody had blood spilt”.

A meeting is held between the BOT Chair and the MOE to discuss safety of students upon return to school.

18 January - The School issues a press release explaining the measures the School has in place to promote a safe environment.

25 January - The Minister of Education asks for an urgent report on bullying at the School.

26 January - The School meets with parents of victims at a law firm.

27 January - The Sunday News runs an article about the incidents.

28 January - The Traumatic Incident Team of the MOE meets with the School to discuss the plan for return of the students to the School.

29 January - The School meets with parents of three perpetrators to discuss a staggered start to the school year for them.

30 January - BOT agrees to set up a “no bully” action group comprising staff, MOE, Police, parents.

Then Chair of BOT publishes a newsletter to parents, stating “on the information available to the BOT and senior management we believe the school has acted reasonably and responsibly in relation to these issues” and, “The BOT has procedures and policies in place to deal with disciplinary matters. These comply with the Ministry of Education guidelines for stand downs, suspension and expulsion. These protocols were followed in 2007”.

1 February - The School writes to the Police seeking the Police files on the incidents to see if further grounds exist for any action against the students.

3 February - A senior staff member and the then Chair of the BOT meet with the Police and the parent group.

CHRONOLOGY

5 February - School starts. First perpetrator returns to school. One returns each day for the rest of the week. The perpetrators are closely monitored, separated from each other during the breaks, and separated from the victims in classes.

11 February - The Minister of Education announces that ERO will review safety at the School. ERO commences a week long on-site review of the School.

14 February - The MOE arranges for a person to be put on the BOT to help manage safety issues and responses to victims' parents.

20 February - The Police grade the offences as the maximum seriousness on a scale of one to five, using the youth offending risk screening tool.

5 March - After advice from its insurer's lawyer, the School decides not to impose further punishments on the students.

10 March - The Police finish inquiries. All perpetrators have admitted involvement in the offences.

14 March - The Chair of the BOT is quoted in the Dominion Post as saying, "I'd have thought we would all be getting over it, but hey". Apologises for statement to David Rutherford (a parent) and the School.

18 March - Police Alternate Action Family Group Conference held with perpetrators.

9 April - CYF Wellington Operations manager and Lower Hutt Site Manager meet with Lower Hutt Police Area Commander.

10 April - The MOE mediates a meeting between the School and the parents.

April - ERO releases a Special Review Report on safety at the School.

18 June - Parents, staff and Police set up a safety advisory group with student representation, with the goal of reviewing all aspects of school administration for safety.