

NSW Ombudsman

Level 24 580 George Street
Sydney NSW 2000

Phone 02 9286 1000
Fax 02 9283 2911

Tollfree 1800 451 524
TTY 02 9264 8050

Web www.ombo.nsw.gov.au
ABN 76 325 886 267

Our reference: C/2009/2155 & C/2009/7009
Contact: Terry Manns
Telephone: (02) 9286 1000

30 November 2009

To NR 30/11/09
AM

ASB

Headmaster
School 1

REDACTED

FILE COPY

Attention: Ms Kate Halloran, Manager, Child Protection Services, AIS NSW

Dear ASB

Ombudsman notifications concerning ARH (teacher, School 1)

Thank you for your notification in relation to Mr ARH and a student of School 1 (our reference: C/2009/7009), which we received on 29 September 2009. Thank you also for your recent correspondence in relation to the reportable allegation against Mr ARH whilst he was a teacher at Knox Grammar School (our reference: C/2009/2155), which we received on 7 October 2009. As clarified in a telephone conversation on 25 November 2009 with Ms REDACT, Acting Headmaster in your absence, I will address your questions in relation to the historical matter first.

1. Issue of jurisdiction regarding historical allegation at Knox Grammar School

The complaint against Mr ARH, which involved the alleged persistent and unwarranted photographing of water polo team students of Knox Grammar School (Knox Grammar) in 1999/2000, as well as transporting students in his private car outside of normal school hours, constitutes reportable allegations as the allegations refer to alleged reportable conduct, and Mr ARH was a current employee of School 1 at the time you (as head of agency) became aware of the allegations.

I note your query whether or not the information constitutes an allegation of reportable conduct, given that you have been unable at this point to identify the alleged victims by name. The allegation is reportable on its face, regardless of whether the alleged victims can be identified at this point, and as head of agency investigating this allegation, you are required under Part 3A of the *Ombudsman Act 1974* to make all reasonable attempts to investigate this matter. That being said, I understand that the issue of whether Mr ARH took photographs of students is not in dispute. Rather, the nature of that activity and Mr ARH's alleged persistence in this activity



despite being directed not to, is central to the allegation of grooming behaviour against Mr ARH

2. Investigation requirements

School 1's investigation would need to be based on the evidence obtained by School 1, which may include information sought from the NSW Police Force (the police) or Community Services in relation to their investigations of this matter. A recent amendment to the *Children and Young Persons (Care and Protection) Act 1998* allows prescribed bodies, such as School 1 School to request information from other prescribed bodies, including the police and Community Services, under Chapter 16A of that Act.

There is a range of material available regarding these provisions, including templates and checklists for requesting and providing information, at the 'keep them safe' website at www.keepthemsafe.nsw.gov.au

In your correspondence with the police or Community Services, it would also be advisable to cite the responsibility of School 1 to investigate these reportable allegations against Mr ARH under Part 3A of the *Ombudsman Act 1974*. If the police or Community Services cannot release information because of wider operational issues, it would be prudent to obtain the agreement of the police or Community Services before formally interviewing Mr ARH regarding the allegations. Instances where the police or Community Services unreasonably delay or refuse to agree to the agency taking necessary risk management steps or proceeding with the investigation should be brought to the Ombudsman's attention.

I note from my telephone conversation with Ms REDA that she was uncertain whether or not the police had interviewed Mr ARH, as indicated by your correspondence. This could be clarified directly with Mr ARH as well, and he may be able to provide a copy of the record of interview with police if he was provided with one.

I would suggest that additional correspondence would assist School 1 to identify the alleged victims. For instance, there may be photographic records which Knox Grammar could retrieve to assist with your investigation, as well as separate recorded instances of the transporting of students, which may form part of Knox Grammar's incident reports or school logs.

I also suggest that School 1 seek to interview other key parties, including the initial complainant, the former Principal of Knox Grammar, any other identified parties who have disclosed information (including a number of staff at Knox Grammar and at School 1). Access to school records for the period in question could also be requested from the current Principal of Knox Grammar. It might also be worthwhile to contact School 2 School, to enquire about Mr ARH's behaviour there as a teacher, given that it was the school that employed Mr ARH from 2001 to 2008, between his employment as Knox Grammar and School 1.

I note that Mr ARH has already denied the allegation that he was asked to leave Knox Grammar because of his alleged behaviour (photographing and transporting children), which contradicts the advice you have received from Mr Peter Crawley, the former Principal of Knox

Grammar. I suggest that a formal interview with Mr ARH will allow you to test this allegation more thoroughly, as it would give you the opportunity to table any evidence gathered by the time of interview. This interview could be conducted in conjunction with your investigation of the subsequent allegations made against Mr ARH (our reference No: C/2009/7009).

From my review of both matters to date, it appears that the earlier allegations against Mr ARH were common knowledge at Knox Grammar and at School 1 and have since been the subject of anonymous notes to you from at least one concerned parent. This would indicate that a growing number of individuals in both school communities, some completely unrelated to your investigation, are becoming aware of highly sensitive and potentially damaging allegations against Mr ARH. To ensure that the investigation is procedurally fair, please ensure that all information in relation to School 1's investigation is limited to relevant parties only, and that employees and any other concerned parties are reminded about the confidentiality requirements in such matters.

Confidentiality issues aside, I would like to add that, while the Ombudsman expects agencies to carry out their investigative responsibilities in relation to reportable allegations, this office is also mindful that the investigation of historical matters can be particularly limited by the type and amount of evidence available on which an agency can make a finding, as well as the resources available to an agency to conduct its investigation. My advice, then, is to make the enquiries available to you under the circumstances, and advise me if and when any difficulties arise in your progress of this matter.

Please note that the hand written notes already provided with the Part A Notification Forms and other correspondence are close to unreadable. If it is possible for those notes to be typed it would greatly assist my future review of your completed investigation.

3. Additional allegation against Mr ARH

We have decided to monitor the investigation of this more recent allegation involving Mr ARH by School 1 under Section 25E of the *Ombudsman Act 1974* (the Act).

I would appreciate receiving the following information pursuant to section 25E(3) of the Act.

1. A detailed plan outlining how School 1 intends to investigate the allegations against Mr ARH, and what role the Association of Independent School will have in these two matters.
2. Any other updates regarding the investigation of these allegations that might be relevant to our ongoing review.

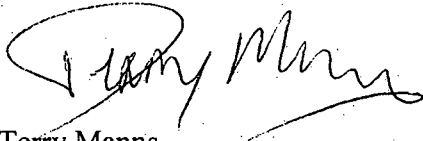
As I have suggested to Ms RED in our telephone conversation, both matters could be combined for the purposes of investigation, although still requiring separate findings as required for each allegation.

Please provide the information to us by **Friday 15 January 2010**. If the information cannot be

provided by that date, please provide me with a status update on this matter at that time. Please note that our office will be closed from the 24 December 2009 to Monday 11 January 2010.

If you have any questions about this matter, please contact me on (02) 9265 0408.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Terry Manns', written in a cursive style.

Terry Manns
Senior Investigation Officer
for the Ombudsman