

School 1

C/2009/2155
 Resolved updated C/2009/7009

Team Support Officer	✓ 8/9 9/9/10	Processed
Administrative Assistant	✓ 9/9 8/9/10	
Case Officer allocated to	✓ Terry	
Other:		

From the Headmaster
 ASB

Terry please brief
 Dave about this case. *llly*
 Kwerden
 DM



6 September 2010

PRIVATE AND CONFIDENTIAL

The NSW Ombudsman
 Level 24
 580 George Street
 SYDNEY NSW 2000

FOR ATTN : Mr Terry Manns

Dear Sir

Re: FURTHER REPORT ON MATTER INVOLVING ARH
REFERENCE : C/2009/2155 & C/2009/7009 and my Report dated 7 June 2010

I refer to our conversation on 21 July 2010 regarding recent developments in the above matter, relating to further incidents of misconduct which may be reportable conduct involving ARH and students from School 2.

I had provided ARH with my letter of Preliminary Findings in relation to these earlier matters on 26 July (See *Letter to* ARH - Tab 1).

My Report to you dated 7 June 2010 followed up your observations and comments in our meeting on 19 May 2010 at your office. In that meeting, you pointed out that it appeared odd that there had been no reports from School 2 behaviour of the kind that we had encountered at School 1 and which had been reported from his time at Knox Grammar School, during ARH's time at School 2 School 2 between his leaving Knox (2000) and arriving at School 1 (08).

I explained in that Report that when ARH's referee at School 2 was contacted, no mention was made of any untoward behaviour, and that the CCYP had cleared ARH when he was appointed to School 1.

Following our meeting on May 19, you will recall that I spoke to ASO, Executive Principal at School 2 to ascertain whether there had been any concerns, and you will recall that following a request from me under new Chapter 16A provisions, ASO provided me with material relating to various matters in which ARH had been involved, and which I proceeded to investigate.

The precipitating event referring to this new matter was raised when ASO rang me on 29 July 2010 (See *Notes of Conversation : 29.7.10 - Tab 2*). He had received a report from an employee who is also a parent of School 2. In her role as a volunteer, she had been serving as a Water Polo coach School 2 teams at Warringah Aquatic Centre on Friday nights during Term 2 2010 (April - June), and had said that ARH had been "hanging around" on the pool deck at the Centre taking photographs of School 2 boys in their swimwear. When questioned, ARH had said that he was taking photographs for School 2, School 2 magazine. ASO had subsequently said that ARH was not taking photographs with the authority of the school.

School 1

ASO [redacted] had mentioned that he was now seriously concerned about some of the boys in this group, all of whom ARH [redacted] had coached in his time at School [redacted] and many of whom he was now tutoring in their homes in English. ASO [redacted] specifically mentioned one of the boys – REDA [redacted] – the boy who had been identified as the one of whom ARH [redacted] had taken many photographs which were subsequently found to be saved on the hard drive of his School 1 laptop computer when it was subjected to forensic examination in the course of the previous investigation (C2009/2155), whom ASO [redacted] now believed may be especially at risk of harm. ASO [redacted] sought my advice as to whether he needed to report REDACTED [redacted] to Community Services, but I said I believed the situation would be sub-threshold for serious risk of harm. This was subsequently confirmed by yourself in a telephone call on 29 July 2010 (See *Notes of Conversation*, 29.7.10, Tab 3), partly because REDA [redacted] was being tutored by ARH [redacted] with the permission and knowledge of his parents.

ASO [redacted] undertook to provide me with a copy of a statement from his staff member relating to this most recent incident (Tab 4).

Prior to the arrival of this statement, I had the opportunity to raise ASO [redacted]'s concerns with Mr ARH [redacted] in a meeting (See *Notes of Conversation* 30.7.10 Tab 5). In the context of asking him whether he needed more time to respond to my Letter of Preliminary Findings, (he had been away from school for two days), I referred to ASO [redacted]'s telephone conversation of 27 July 2010 about Mr ARH [redacted]'s attendance at Water Polo games last term. ARH [redacted] said he had been to "a couple of games." He denied taking photographs of boys in their swimwear, and he also denied having said that he had explained that the photos were being taken for School 2 [redacted].

An unexpected development over the ensuing weekend was that ARH [redacted] emailed me on Sunday 1 August and submitted his resignation from the staff of School 1 [redacted] with effect "as soon as possible". This was followed up on 2 August with a letter, stating that the reason for his resignation was his own and his wife's health. (Tab 6)

MEETING WITH ARH [redacted] 2 AUGUST 2010

I met with ARH [redacted] on Monday 2 August (see *Notes of Conversation* 2.8.10 Tab 7). In discussion, it was agreed that I date his resignation as and from the end of the current term, 24 September, but that following the completion of the Trial HSC Examinations on 13 August, we would review the situation.

ARH [redacted] told me that he did not wish his having resigned to be capable of being interpreted as his wanting to run away. He said that he understood that the process of the current investigation was still continuing, whilst we were awaiting ASO [redacted]'s letter with the statement from REDACTED [redacted]. I undertook to provide him with a further letter regarding the new information as soon as possible, and ARH [redacted] said he would respond as soon as possible as well.

ARH [redacted] then told me that he had never molested or interfered with or touched any child or young person inappropriately; he had never had sexual designs on a child; and that he was not a sexual predator, yet it seemed he could not escape the views of certain people that he was some kind of sexual predator. He said that all he had ever done for children had been done out of love. He said he realised that he might be reported over this, but went on to say he intended never to teach again.

STATEMENT FROM REDACTED [redacted]

ASO [redacted] sent a fax of his staff member, REDACTED [redacted]'s, Statement dated 2 August 2010 (Tab 8) on Monday 3 August (with the original coming by mail on 5 August 2010). REDACTED [redacted] states that by the end of the season she had been made to feel uncomfortable about a few things.

Noting what she describes as ARH [redacted]'s presence at Water Polo every week, REDACTED [redacted] says she asked what everyone else was asking, as to why he was there. He told her that he was there to watch REDACTED [redacted].

Having observed that he took photos on at least one occasion, she asked the coach if he had permission and the coach said no.

He had told the boys, according to Mrs REDACTED's son that he was taking photos for School 2 School 2. ASO has made clear that ARH has not supplied photos for the magazine since he left the school. When questioned later about obtaining copies of the photos the boys had seen him taking, he said that "none of them had turned out".

You will remember when I was in discussion with ASO in May this year, as my report dated 7.6.10 states, ASO said that since ARH had left School 2, he had been concerned that he had kept "turning up".

ASO also told me that ARH had kept turning up at School 2 Water Polo games and had taken photographs of School 2 students, not while they were playing but in their swimming costumes, getting in and out of the pool and the like. Because of his concern, ASO said he had had to ask him to stop coming to School 2 games. Clearly, his turning up at games during the past school term (April to June 2010) was against ASO's wishes.

Having heard ASO's comments and having received his staff member's statement, I decided that I needed to continue my investigation of these matters, particularly the pattern of behaviour which appeared to have continued over a period now of some ten years in three different schools, which ARH did not appear to have understood was inappropriate.

Having received REDACTED's statement from ASO I prepared a supplementary Letter of Preliminary Findings (dated 4 August 2010 – Tab 9) for ARH.

LETTERS OF PRELIMINARY FINDINGS AND RESPONSE

On August 9, ARH asked to see me because he said he was confused as to how to respond to the two Letters of Preliminary Findings dated 26 July and 4 August. (See *Notes of Conversation* – 9.8.10 Tab 10). I handed him at this meeting my acknowledgment of his Letter of Resignation (Tab 11), and told him that he could commence an indeterminate period of Carers' Leave in order to be able to care for his wife, whose chronic back pain was so severe her condition was deteriorating very quickly. He was extremely grateful for this suggestion.

On 13 August, I received his response to the Letters of Preliminary Findings (Tab 12). Having considered it, and in the light of all the evidence, I reached my intended final findings in the matter, and set them out in a further letter to him.

LETTER OF INTENDED FINAL FINDINGS

In the interests of procedural fairness, I provided ARH a Letter of Intended Final Findings (Letter dated 17 August 2010 - Tab 13) to provide him with one more opportunity to make a response or provide any further information. Because he was on Carers' Leave, and thus not at school to be personally handed the letter, I phoned him on Wednesday afternoon 18 August and told him basically what I had determined and that the letter would arrive at his home the next day (See *Notes of Conversation* – 18.8.10 – Tab 14).

Tragically, REDACTED had passed away earlier that day, and this was not known to ARH at the time of my call.

ARH acknowledged my letter in an email dated 20 August 2010 (See Tab 15) asking what the consequences were. I responded in a further somewhat non-committal email on Sunday 22 August (Tab 16).

FURTHER CONCERNS REGARDING REDACTED

In the course of conversation and email correspondence with ASO, ASO wrote that he remained quite concerned about School 2 boy(s) who appeared in the photos found on Mr ARH School 1 computer in the original investigation (See Email dated 24.8.10 – Tab 17). He said that he had discovered that ARH had re-established after-hours tutoring with at least two boys from School 2 he really wanted to be able to stop it.

Under Chapter 16A provisions, I wrote to ASO (Tab 18a) and to Mr John Weeks, Headmaster of Knox Grammar School (Tab 18b), with whom I had had a brief conversation at a meeting on 23 August, reporting my intended final findings in the matter. ASO responded to this expressing his concern for REDACTED. REDA and his father had attended Mrs REDAC's funeral on 24 August, and since then ARH had been contacting REDA each night and sending emails and text messages (See Email from ASO 27.8.10 – Tab 19).

I discussed ASO's concerns with Mr REDACTED, the Business Manager at School in a phone call on Saturday 28 August (see *Notes of Conversation* 28.8.10 – Tab 20). Mr REDACTED had let REDACTED or ASO know that he was becoming concerned about ARH, and Mr REDAC was concerned for REDA's welfare. My various options were then discussed between us, and Mr REDA and I agreed that there was nothing that I could actually do because the boys involved were not School 1 students, and I appeared to have no control over what ARH did in his own time. Mr REDA and I agreed that the best course would be for ASO to suggest to Mr REDACTED that the tutoring, which was evidently happening with Mr REDAC's full knowledge and support, should cease.

ASO and I spoke later that evening (See *Notes of Conversation* with Terry Manns – 30.8.10 - Page 4 – Tab 21) and ASO told me that he would speak to Mr REDACTED later that evening at a school function.

I believe that that conversation must have taken place, because ARH alludes to someone having spoken to the parents of a boy he was tutoring and the tutoring had ceased (See *Letter of Response* from ARH dated 30.8.10 – received by me on 3.9.10 – Tab 22).

Clearly, ARH's continuing attention to REDA was causing his father and senior staff at School concern at this stage, confirming ASO's earlier statement that he believed REDA may be at risk of harm.

This concern related to ARH's inappropriate focus on one child and to the continuous nature of it.

On 3 September, ARH wrote to me asking whether a soft copy of his response was acceptable and I told him it was. The response arrived later that day (See *Letter of Response* from ARH dated 30.8.10 – Tab 22).

In his letter, ARH says that he accepted that he should not have taken photos at Water Polo games, but denies that his doing so was in any way inappropriate. He claims that the photos he took were of students in tracksuits, which departs from the claims made by Mrs REDAC and others. Yet it remains the case that, without necessarily always having proper authority, ARH appears to have been taking photographs of boys in their swimwear at Knox and at School 2 for a period of over ten years, and has been asked on numerous occasions, as has been previously reported, to stop doing so.

That he has admitted to attending School 2 Water Polo games in Term 2 this year to "see REDACTED" too is troubling, given that numerous photographs of REDA were found on ARH School 1 computer late in 2009; that particular concern has been expressed for REDA's welfare by his Principal, ASO; and that REDA's father has also expressed concern to senior staff at School 2 but ARH's attention to his son.

I do not consider that ARH's response negates the evidence I have presented of conduct towards a child or young person or towards children or young people which, in the words of the Ombudsman's Office Practice Guide 2/2010, crosses professional boundaries, and is *inappropriate and overly personal focus on a child or young person*.

He also advances the view that his tutoring of many students over the years at Knox and School 2 has been welcomed by many parents, and has not constituted anything inappropriate. Rather than be presented it as being evidence for his pastoral care for young people as their teacher rather than being sexual misconduct. He asks me to consider his long term and positive impact on students' lives before I pass judgment.

CONCLUSION

Having taken everything into consideration, my investigation has established a pattern of behaviour, in more than one school, over a period of ten years, during which several different senior staff in schools have requested that he desist from his inappropriate behaviour.

My conclusion, therefore, is that, in the words of the Ombudsman's Office Practice Guide 2/21010, Mr ARH appears to have crossed professional boundaries, in that he has engaged in

conduct towards . . . a child or young person, or a group of children or young persons,

being students of Knox Grammar School and School 2, in taking their photographs while they were dressed in swimwear, without having proper authority and/or without the permission of their parents;

and that he has demonstrated an *inappropriate and overly personal focus on a child or young person*

being REDACTED a student at School 2, for whom at least the Executive Principal of School 2 holds fear of serious risk of harm owing to ARH's having held a large number of photographs of him on the hard drive of his School 1 staff laptop computer some time after he left School 2; to his having told Mrs REDACTED that he had come to Water Polo games each week "to watch REDACTED", and was in fact also tutoring REDACTED in English, albeit with his parents' approval and knowledge, at his home,

and I find that his conduct is reportable conduct which involved sexual misconduct.

My letter of Final Findings is attached (See Tab 23), and Form B reporting this matter to the Ombudsman is attached (See Tab 24), together with copies of my Notification of REP to the CCYP (Tab 25) and the REP Letter to the employee (Tab 26).

Please do not hesitate to let me know if I may assist you further in this matter in any way.

Yours sincerely

ASB