

C J and V A Turnbull

19 May 2017

Judge Peter Boshier
Chief Ombudsman
Office of the Ombudsman
P. O. Box 10152
WELLINGTON 6143

Case 407247 (Complaint ground: 409208, 423133, 423139)

Dear Judge Boshier

Firstly, thank you for your letter dated 12 April 2017, and 12 May 2017.

Points raised with Anna Down during phone call

With reference to our discussion with Anna on the telephone Thursday May 13, we were informed that the Ombudsman is narrowing the investigation to the use of the room regarding our son only and the time period he attended the school. We would like to reiterate our complaint is about all students improperly restrained by the school since 1999, and has never been limited to our son. We made our initial formal complaint to the school with allegations of improper restraint of a student (not our son), and only later after investigation by the Ministry of Education it was confirmed, this same improper use of restraint had also been used with our son.

We do not understand why the Ombudsman Office would choose this path as it extremely limits any investigation, and undermines the rights of all students. Police investigating the use of the seclusion room at Ruru Specialist School also took this stance limiting their investigation to our son, and did not conduct a Mass Allegation Investigation. We have forwarded our formal complaint made to IPCA Chairman Judge Sir David Carruthers, which Anna has received. Police limiting their investigation was an overarching concern of ours, and now we are extremely disappointed to hear the Ombudsman Office is now doing the same. Please advise us why your investigation is no longer into the improper use of seclusion at Ruru Specialist School. We feel that disregarding the other students that have been forced and shut in the seclusion room by school staff, compromises the integrity of this investigation. *Fairness for all.*

After talking with Anna, it was also alarming to hear she has aligned her view with the schools, in that the small storeroom was not being used as a seclusion room. This was also perceptible during our meeting in April, when the seclusion room was continually referred to as a 'safe room'. A seclusion room is defined as the involuntary placement of a person, alone in a room, and that person being unable to freely exit. In the face of this definition and the information gathered by the Ministry of Education and their investigator, the school still maintains that the small storeroom was a safe/calm/timeout room and not a seclusion room. Why does the school refuse to acknowledge the room was being used as a seclusion room? The door does not have to be closed shut, for it to be a seclusion room.

Ministry of Education Head of Sector Enablement Katrina Casey confirmed by letter in June 2016, that the room had been both designed and built to be used as a seclusion room.

During the phone discussion with Anna, she indicated she was of the same view as reported by the school in the Johnstone Report and later reported to the public by the principal Erin Cairns, that the door of the seclusion room was not closed by staff. This view has been taken before talking to witnesses who have stated the door was closed. For example in a statement to Police Aileen Giles, states ex-teacher [redacted] has described the use of the room "the door to the room was shut, they couldn't get out and she sometimes was to let them out". This person has now been identified as XY by Aileen Giles in Police records. The notes taken by J Eaton QC when he interviewed this person continue to be dismissed presumably as she declined to interview with Police, however the principal and school staff also refused to talk to Police investigating, yet the schools account is considered credible.

If the door to the storeroom always remained open during use, and staff could view students, how was it possible for students to defecate and smear faeces in the room? If the door remained open during use how were staff able to maintain the safety of the student and themselves? If a "violent, out of control, threatening" disabled student (5-21 years) was physically restrained and transported to the area, then physically forced into the small dark storeroom, how could staff contain the volatile student safely (without injury), by holding an outward opening door, open? If the door remained open during use how were staff able to contain the student and maintain the students integrity during an episode? If the door remained open during use of the seclusion room, how did school staff ensure the students (including the students in the classroom witnessing the restraint episodes) were not traumatised?

Anna explained the sector generally had little knowledge around such rooms. We are assuming, in other words Anna is suggesting they (principal and staff) were confused and possibly made a mistake, like the other 36 NZ schools using seclusion rooms. However, if the school was unaware of right from wrong, why did they keep it a secret? Why was it not shown to parents, board members, Ministry of Education, ERO? Why was it never talked about? Why were parents not informed their children were being restrained in the room? Why did the school make changes to the room before, during, and after the Ministry of Education investigation and Police investigation? Why did they only allow Police access to the property to view the room, maintaining silence, 5 months after the commencement of the Police investigation? Why are they still refusing to acknowledge the room they built was used as a seclusion room? Why did the principal and staff refuse to talk to investigating Police investigating the use of the seclusion room?

Before sighting the seclusion room at Ruru Specialist School, we had no knowledge of such rooms. We had never heard of the term "seclusion room". We did not know seclusion rooms existed. We

did not need to have any knowledge of such rooms to know that what we saw was very wrong. That is why we contacted the Police immediately, without hesitation.

11 April 2017 Meeting

Reflecting on the questions Anna asked at our meeting (as best we can), we feel it necessary to reiterate some points. Anna asked what is our 'biggest evidence' that Rovin was put in the room outside of the dates the school has listed?

Witnesses have provided information that does not align with the information the school provided the Ministry investigator.

- Ex-teacher aide now Police officer Jess Raukawa, affirmed this with Police on Police record. (Anna has confirmed this teacher aide has not been contacted as part of the Ombudsman investigation.)
- Ex-deputy principal told Callum he had shut Rovin in the seclusion room at least twice during 2013. He said, "nothing was ever written down, maybe the odd email. I would communicate with the team."
- an ex-teacher told Callum she saw Rovin being dragged by staff to the seclusion room. She said she saw him being restrained in the seclusion room at least 3 times in the last year she was employed at the school. She told Callum the seclusion room was used hundreds of times.
- XY notes state "XY was not aware of any documentation being collated by the school in relation to the use of the room and expressed disbelief when told that the documentation produced suggested the room was only used on a handful of occasions annually and not at all in the year 2013."

Please consider the other students who were also restrained in this room since 1999, besides Rovin, B, C, D and E. A total of 10 students have been named by Rovin, caretaker Les Shaw, parents/caregivers identified in the Southland Times and spoken to by Victoria. Ex-deputy principal told Callum that he had put other students in the room. Notes taken by J Eaton QC states "XY refers to it as a punishment room. XY is adamant that the room was used on a very frequent basis, on average daily." On 4 July 2016, the school caretaker Les Shaw told Callum that he removed the carpet in the seclusion room because [redacted] wiped faeces all over the walls. The Terri Johnstone report states "It was carpeted until recently, with an interim period of exposed concrete. I have cited an email to the caretaker asking him to lift the old carpet." Victoria spoke with the mother of [redacted] and she knew nothing about this incident, saying that it would not have been her [redacted] because she was toilet trained. She also told Victoria that she knew her [redacted] was being put in a room, but when Victoria asked her if the school told her when they were restraining her in the seclusion room, she said "no". Was [redacted] the student referred to as " " in the Terri Johnstone report?

We recall Anna asked why we think the school purposely built a small storeroom instead of building a seclusion room.

We think the school built a small storeroom because it would be "not pleasant", dark, small, confining, and hidden (within a locked classroom for very high needs students, who are mostly non-verbal). We think the build was planned that way so the room would go unnoticed. The building consent would be approved if it was a straight forward storage room, but if it was known that it was going to be a habitable space to put children and young people with disabilities in, regulations and

standards would have been complex, therefore the desired outcome would not have been approved by the Invercargill City Council.

According to plans on file at the Invercargill City Council, there was already an allocated timeout room at the school. The timeout room on the plans was much larger in size and was in a less restricted area of the school. As we commented at the meeting, why did the school request to have sound proof batts installed part way through the build...why did they not have the electric lights that were detailed on the plan installed...why were the existing internal ceiling point windows reduced in size? We are adamant that their intentions were cruel. Why was it 'grimy' and why did the room have no floor coverings when we viewed it? The school was extremely wealthy at the time, yet the condition of this room when we saw it was comparable to the worst images of solitary confinement we have been able to search on the internet. It was barbaric.

The school have stated (when designing the room) they viewed other safe areas to ensure best practice, yet they designed and built a small storeroom. A small storeroom with soundproofing, no light, no heating, and no window to view. This room should have been used to store resources. Instead children and young people with disabilities were restrained in this room, by force.

The Invercargill City Council approved consent for a small storeroom. The room was referred to as a small store during construction by the builder and the council inspector. We know the designer was School Support Southland, G McMillan and the plans were drawn by G Moffat who also signed the Building Consent application. The design engineer was Mr Keith Anderson.

We have been advised by the Ministry of Education that they were aware of a "labelling error" when we requested plans through an OIA request. We were not told of this "error" at the time our request was made, and we were sent false plans. Only later when found out, did the Ministry confess to us they that knew the labelling had been changed to timeout. The "error" was known by the Ministry before Terri Johnstone had completed her investigation, however she also was not advised of this. Terri Johnstone reported "The room at Ruru Specialist School was specifically built as a 'time out' room and was not a converted storeroom."

If it was simply a "labelling error" as the Ministry is now suggesting, it does not change the fact that a small storeroom was built. Under consent the storeroom is still a storeroom.

We are just concerned parents, trying to find the truth. We expect that the Ombudsman's investigation will uncover the answer to this question that Anna put to us.

Proceeding with an investigation

We understand you will hear or obtain information from the people you see fit, and regulate the procedure. We would like to know if you have any intention requesting to talk to witnesses who have information that differs from the school's disclosures. For example:

Jess Raukawa – Police officer who previously worked at Ruru Specialist School as a teacher aide. Police records show Jess was aware of the room. She advised Police that on occasions she minded Rovin while he was in this room. Jess commenced employment at the school mid-2012.

Paul Anderson Kereti – 2013 Deputy Principal who told us he shut Rovin and other students in the room.

Aileen Giles – a person who was told by ex-teacher that she had witnessed the soundproof room (as described) being used frequently, daily. The door being shut and students not being able to exit. She referred to the room as punishment. spoke of witnessing

Ruru Specialist School teacher (also current Board of Trustee) physically assault a student. When she reported this to the Principal Erin Cairns, she noticed staff stopped talking to her and her work hours were to be reduced.

– referred to as XY in Notes of interview between J Eaton and XY 1/4/15. XY has a prior association with Ruru Specialist School. XY is willing to talk to J Eaton and to any Ministry representative but does not want name known to Ruru School. XY is concerned of being targeted in the small Invercargill community if XY's name was known. We understand the Office of the Ombudsman has the responsibility to protect whistle-blowers under the *Protected Disclosures Act*.

Jenny Hogg – someone who has sighted the room before our complaint was made. She is someone who had some knowledge of the room relating to its use. She is a person who witnessed and reported to the Principal staff dragging a student by their hair.

Victoria McDonald – Rovin's teacher of 3 years who has told us, no one, nothing should be put in that room. She is a person who was told by the school not to talk to us. She has told us that management told her she was too close to students and gave kids too many chances and that they would manage behaviour, not her. She is a person that told us she did not know of any parents that knew about the room, as it was never talked about. She is the person that Terri Johnstone reported signed forms to confirm she had communicated to us so that we were aware that our son was being restrained in the seclusion room, when she did not.

Alan Duston – Bus driver who confided in Victoria after being told by a student that another student was regularly put in the broom cupboard at school when he 'played up', spending long periods of time there. Mr Duston witnessed this student being distressed often, saying "I don't want to go in the broom cupboard". Mr Duston witnessed our son being mistreated by teacher aide Sharyn Jefferies, and made a complaint. He felt victimised by the school for making this complaint, when the Principal tried to have him removed from the Ruru Specialist School service, intimidating Southland Go bus manager into agreeing to remove him. This decision was then overruled by central Go bus management. Mr Duston was the person who witnessed and photographed 2 school staff members restraining a student face down, kneeling on the students back. He told us the teachers were swearing. After this photograph was shared, Mr Duston received formal notice that he must not approach the school until the exact time of pick up. Staff then monitored his arrivals and he received formal complaints, once for being 3 minutes early.

School Support Southland, G McMillan, G Moffat, and Keith Anderson – Project managers and designers who were involved with the building project. These people will be able to shed light on how a seclusion room was intended and designed, yet a small storeroom was consented and built. They will also be able to confirm if they changed the labelling on the plans from store to timeout before and after the Invercargill City Council consent was granted. We would expect the Ombudsman to uplift all documentation from the school, Ministry of Education, School Support Southland, and Invercargill City Council and investigate thoroughly all aspects of the design, consent, build and use of the room. Finding out who played what part in order to discover how this small dark storeroom was able to be used to restrain disabled students for 15 years before being discovered by parents and shut down by the Ministry of Education.

– mother of a student at the school who had no knowledge of her child defecating and smearing faeces in the room. She had knowledge that her child was put in a room, but did not know when or how often this was happening. She is a person who told Victoria that her and her husband previously had some concerns about their child always being covered in bruises and

described a massive bruise she discovered when her child was showering one day. She said the bruising had stopped now, and that timeframe aligned with when the Ministry closed the seclusion room.

It is our suggestion that you view the area that was once the seclusion room. From studying the photos in the Terri Johnstone report, the carpet on the walls was changed and there was no carpet on the floor. We think it would be appropriate to cover the entrance with a door or something similar to gauge how dark and cold this room was when it was being used to restrain students. This would be crucial to determine how anyone could have conceived that this was an acceptable way to treat a highly-distressed student with disabilities, and not a form of torture.

We recall Anna commenting at our meeting that photos of the room in 2011 were made available to you. In January 2015 pursuant to the Official Information Act, our lawyer J Eaton QC requested all photographs of the seclusion room otherwise known as a "timeout/safe room" on our behalf. The 2011 photographs have never been made available to us.

With reference to that same OIA request, we asked for all complaints regarding staff abuse of students at the school in the period 1994 – 2014. We were advised there have been no complaints of staff abuse of children between 1994 – 2014. This was untrue.

- Turnbulls
 1. Son's treatment and allegations of assault against Sharyn Jeffries
 2. Turnbulls complaint regarding 3rd party allegations of teacher squirting students in the face with cold water, to manage behaviour.
 3. 3rd party allegation regarding student being put in broom cupboard when he plays up.
-
- Jenny Hogg

We do not believe the stage or platform you are proposing is conducive to obtaining the truth. We believe that the proposed format falls short of the nature and gravity of the improper activities going on in secrecy at Ruru Specialist School. Specifically, you are proposing to hear directly from the people you want to and for others to have the same opportunity to hear and participate. This would allow for school staff to simply tow the party line or answer in a copycat way. This would also allow for intimidation or stand over tactics from those with power. For others to be allowed to hear and participate limits the chances of people being open and honest, and uninhibited. For example ex-teacher has requested she does not want name to be known to the school as she fears reprisal, and this was the reason she gave us for not speaking with Police. Bus driver Alan Dustan already feels victimized by school staff and management for speaking out against abuse. We can only imagine staff will fear the same response. We would also suggest careful management of timeframes when people were called to speak, as intimidation could take place inside or outside the proposed environment. This may seem an extreme reaction, however if you operate in an inquisitorial fashion and get to the truth, people careers, reputations, and futures are in jeopardy. If you do request to speak to people outside the school we request care is taken to ensure safety and privacy.

If your intention was to have us sit in a room to hear what school management says reading from a statement they prepared in advance, having limited your investigation to our son and his treatment at Ruru Specialist School, then we would decline this offer.

If it is your intention to speak with wider selection of people about their knowledge pertaining to the improper use of a seclusion at Ruru Specialist School, we would also decline because we believe it would be inappropriate for the same reasons we do not believe others should hear and participate.

We recall you made a comment to us at our meeting, that you were sensing that we were carrying a feeling of guilt as parents, regarding our son being treated this way. It is hard to be precise with wording regarding your comments, however we would like to assure you that we have absolutely no feeling of guilt, more a deep-seated regret that we unknowingly put our son into an abusive environment. We are devastated that we have been deceived by people we entrusted our son to. We are let down by a failed system.

We are speaking out and standing up for children and young people who have no choice and no voice.

Yours faithfully

Callum and Victoria Turnbull

Subject: FW: Office of the Ombudsman - Arrangements for meeting 12-13 June 2017
From: "Amanda Hill"
Sent: 9/06/2017 3:16:57 pm
To:

See below.

Kind regards

Amanda Hill
Partner
Cooper Legal

PO Box 10899
The Terrace
Wellington

Phone:
Fax:

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From: Anna Down [<mailto:Anna.Down@ombudsman.parliament.nz>]
Sent: Friday, 9 June 2017 3:10 p.m.
To: Amanda Hill
Subject: RE: Office of the Ombudsman - Arrangements for meeting 12-13 June 2017

Hello Amanda

At this stage it is highly unlikely that [redacted] and Jess Raukawa will attend. However, we are making further enquiries with them both, with a view to obtaining from them any relevant information they hold.

I would just note that the School is aware that the Chief Ombudsman was seeking the attendance of Ms Raukawa, but not Ms [redacted]. As Mr and Mrs Turnbull know, Ms [redacted] has consistently expressed a wish to remain anonymous.

Regards,
Anna

Anna Down
Acting Senior Investigator
Office of the Ombudsman | Tari o te Kaitiaki Mana Tangata

DDI 09 300 4205 | Phone 09 379 6102 | Fax 04 471 2254
Email Anna.Down@ombudsman.parliament.nz | www.ombudsman.parliament.nz
Level 10, Shortland Centre, 55 Shortland Street, Auckland 1010
PO Box 10152, Wellington 6143