

LEGISLATIVE COUNCIL

Wednesday 4 March 2009

EDUCATION (OMBUDSMAN AND SCHOOL DISCIPLINE) AMENDMENT BILL

The Hon. R.L. BROKENSHIRE (20:55): Obtained leave and introduced a bill for an act to amend the Education Act 1972. Read a first time.

The Hon. R.L. BROKENSHIRE (20:55): I move:

That this bill be now read a second time.

I rise today to introduce a very important bill, which I am pleased to say already has in-principle support, I understand, from the opposition, because the shadow education minister indicated on morning radio when I announced this reform that an education ombudsman was its policy going to the next election. This bill is intended to deal with public outcry over Education Department inaction or bureaucratic bungling of complaints by students, parents and teachers alike. The system is breaking down, and the solution is an ombudsman specific to the education sector. This bill appoints an education ombudsman independent of government with the powers of a royal commission, as is the case with the state Ombudsman. It enables the education ombudsman to initiate his or her own investigations or conduct investigations referred to him or her by the minister or a parliamentary committee. It allows the education ombudsman to make directions to the minister to amend school discipline policies, requires any changes in school discipline policy to be scrutinised by parliament's Social Development Committee, provides immunity from civil liability for any person who complains to the ombudsman or makes a statement in an ombudsman's investigation, and, finally, allows the state Ombudsman to transfer existing education-related matters to the new education ombudsman.

Washington state in the USA has an education ombudsman who deals independently with complaints from the primary (or elementary, as they call it there) and secondary school systems, and it is quite separate from its education department. The model has been proposed in other places, but it seems to be most developed there.

In a local radio report on 7 April last year the Washington state education ombudsman's background was explained quite well, as follows:

Theoretically it should be the job of schools to respond to parent concerns, but director of the new office of the Education Ombudsman, Addie Simmonds, says that the reality is that K to 12 [that is, reception to year 12] teachers and principals, they don't have a lot of time to respond to emails and calls and sometimes, she says, the teachers and the principals they're the problem. There are many, many situations when families are involved in long-term situations with the school where they need to come to some kind of a resolution, so the involvement of a third party to bring both parties to the understanding, that we are talking about [first and foremost] the education of the student' [and the wellbeing of all students and staff in that school]. The ombudsman's office was created to be that reminder and to mediate conflict. The office will also be looking out for gaps in the state's education policies or procedures and, after a year of complaints, questions and conflicts it will make some recommendations to the legislature.

In other words, it will report to the parliament. I have been absolutely appalled at the tales from the South Australian education system that I have heard from constituents contacting my office and on talkback radio. Never in my time in parliament have I heard such awful allegations of neglect of children, disregard for parents' concerns and sometimes totally inappropriate support for teachers put in difficult situations.

Clearly, this is another example that highlights the breakdown of social fabric and families and communities in our state. We are seeing an accelerating increase in this. It is something we should not have to deal with, but in a complex society, where too many laws over the years have worked against the best interests of responsible parenting and support for people in positions of both authority and responsibility (such as teachers), it is now time to bring in an independent ombudsman to oversee these complaints.

I will give some examples of the concerning situations that am hearing about. One was a coach abusing children. An overbearing basketball coach yelled and abused children, causing the children great distress. Several parents have told us that those who complained were shouted at by the principal. One mother, who was complaining about the abuse of these children during the coaching of the basketball team, has now been banned from speaking to the principal. The parents were called names by the district director and the coach has threatened to cancel the team if the parents complain again. It was a difficult situation for the principal and a difficult situation for the district director and, in my opinion, there was not enough support from head office—an example and a reason for having an independent umpire.

Secondly, a child who was racially abused sought a transfer under medical advice, which the department refused. A child was called a chink over a period of eight months at a private school at Adelaide. His doctor diagnosed depression and ordered that he not attend school. Actually, that child has not been at school for over three weeks. The doctor's advice was to reunite the early high school aged child with his mates at a nearby well-respected public high school. Unfortunately, the department has said no. I asked a question in parliament on 30 October about this issue. We still have not had a response from the minister in the parliament. Again, this highlights a situation where an ombudsman would be of great benefit in sorting out the problem.

A third example relates to a school's failure to act on a 12 year old bullying a 7 year old. The 12 year old started picking on the 7 year old, choking the child on the bus and allegedly slamming his head in the drinking fountain at the school. This particular 12 year old child threw chairs and ran away from school to traipse about town. The school took no real action in relation to the bullying of the 7 year old, and now the 7 year old has started imitating bullying behaviours because he has seen that bullies get away with it. All the school could do in this case was to suspend the bullying child, not expel him. In fact, it is almost a badge of honour for a child who carries on that way, rather than their receiving proper discipline and support. The parents of the 7 year old seem to have nowhere to go for support in order to sort out the problem, given that the school has other problems to deal with with respect to bullying and general behaviour problems.

Another example relates to a young girl being bullied and little being done about it—next to nothing. A 10 year old girl moved with her family to a new public school. From the outset, other girls targeted the girl and harassed her. The girl was being dragged into fights with the bullying group. The mother of this girl is not only distraught but also wonders whether she should be teaching her daughter self-defence, because the school has suspended only one student for less than a day for the assaults upon her daughter. The mother has now laid assault charges with police. The parents are seriously considering moving their daughter to another school. The parents have said that they feel that, because the school is a mixed race school with immigrants, the school is siding with those who, in this case, are doing the bullying and happen to be from migrant backgrounds and come from troubled overseas situations. The mother feels the school has more compassion for the bullies than for the victim, in this case her daughter.

I also refer to the henna tattoo case, something which was in the public arena. Temporary tattoos were applied to a child without the parents' knowledge. Of course, this does not breach the law, as I understand the child tattooing laws, but it runs dangerously close to it. It is an affront to parental authority over one's child. Unfortunately, in this instance, the school backed the idea of henna tattoos, so where was the parent to go for support and adjudication?

However, it is not just students and parents who are suffering, clearly schoolteachers are suffering too. I will give a couple of examples. A teacher was attacked by a student. Initially a parent called who was concerned about his graduate teacher son teaching at a rural high school. I spoke to that parent. This young teacher was very dedicated and happy to go to the country. A student was asked to pick up a piece of paper in the classroom and then decided that they would dispute that direction from the teacher. The teacher was then on the receiving end of a chair being thrown by the student.

The school tried to do what it could, but, as I am advised, under education department policy the best it could do was, whilst the staff and the principal strongly supported this good, young teacher, give the child a three day suspension from the school and that was the end of the punishment. Again we need an independent umpire to recommend policy changes because, I believe, the department is inept in coming up with the right behaviour management policies for our schools.

The final example of a complaint that has been made to our office is a school doing nothing about cannabis abuse and failing to defend a conscientious teacher. This teacher observed children smoking marijuana in the school. The teacher reported the children to the principal. Clearly, the principal was concerned but did not act in relation to the children. Instead, the principal told the teacher off for giving him a hard time because of all the paperwork he would now have to do to meet the policies and processes of the department. The key point is: other than the union, where was that teacher to go for support?

The principal had one hand tied behind his back and that particular school was worse off because the issues around smoking marijuana prior to school were causing incredibly disruptive situations for the rest of the children who wanted to learn, as well as having a concerned teacher. In the end, that teacher was so frustrated and disappointed that they took early retirement because they were sick and tired of the lack of support from the department and not knowing where to go to make these complaints and to ensure there was a proper policy change of direction and proper resources and support for that school. There are many others but the hour is late so I will not carry on too much longer on this matter.

The Hon. R.I. Lucas: Hear, hear!

The Hon. R.L. BROKENSHERE: I appreciate the 'Hear, hear' from a former education minister who must be very concerned about what is happening these days compared to when he was minister (probably about eight years ago) in respect of bullying and harassment. We have seen it on the trains, at the train stations

and before and after school. As a former police minister, I well know that, if you are starting to get this sort of behaviour and breakdown of community and social fabric in schools and it is not addressed, unfortunately, some of those people will be spending much of their time with SAPOL, rather than being productive citizens in the future and they will probably end up costing the government of the day—and obviously the taxpayer—some \$75,000 to \$80,000 a year as they go through a life of incarceration. That is why I want to see these opportunities developed for an independent education ombudsman.

The common theme throughout all these complaints is that families are feeling the department has failed in its duty of care to students. I can only put it down to ideology that prevents a school from stepping in strongly—perhaps suspending or even expelling students—in the interests of protecting the majority of students and teachers. I list amongst those who support the principle of this bill psychologists Dr Chris Hamilton and Dr Daryl Cross, and education commentator and former SA Association of State School Organisations representative Graydon Horsell.

As I said at the outset, the opposition has indicated that it also supports the principles. This is not the same bill as the member for Bragg introduced in 2005. Her bill contained many matters that I believe should be dealt with by regulation. This is a simpler bill which I believe, given the start-up time required, establishes the ombudsman's office and then allows the implementation to be worked out later. Our bill also adds the discipline policy component, which I will come to in a moment. In September 2008 (and I have discovered this fact only this week), the Canberra Liberal Party also released a policy for an education complaints commissioner.

An honourable member interjecting:

The Hon. R.L. BROKENSHIRE: The Australian Capital Territory Liberal Party. Interestingly, it said something which sounds familiar and which I think sums up the state of play in South Australia. It stated:

What parents want most of all is an official whose impartiality is not compromised by close relationships with the subjects of a complaint. It is very hard for an immediate colleague to judge the conduct of a workmate with whom they have daily contact. Students and parents have been telling us they need an independent authority they can turn to because often they find they keep hitting brick walls. They need to know there is no confusion over who to complain to and no excuse for an official to buck pass or to sit on a complaint because it was sent to the wrong in-box.

What is needed here is a one-stop shop. We need the best possible environment for young people when they are undertaking their education. It is complex and there is a lot of pressure and bullying and harassment, which can work against their best interests in the long term. Again, the teachers also must be protected.

We have seen with the Health and Community Services Complaints Commissioner (who I note under Labor when it was in opposition was meant to be a health ombudsman, but somehow the name changed) that that particular type of ombudsman in the health industry has struggled to get up and running for some time. Family First believes the critical thing is for the ombudsman to be established, hence the relative simplicity of this bill compared to previous models.

The example in Washington State, USA, that I highlighted earlier shows that, despite being established by statute during 2006, it was only in April this year that the ombudsman started to hear complaints. I have introduced this bill so that we get an ombudsman sooner rather than, for example, after the March 2010 election. I want delivery, not promises that after an election become broken promises. If the government passes this bill now, we can have an ombudsman up and running and hearing complaints before the end of this financial year.

As I said in my maiden speech in this place, I am putting people before politics and power, and I think election cycles should have nothing to do with better advocacy and outcomes for people unhappy in the education system. We should be governing for the people all the time, not only around elections.

I want to spend a little time on the discipline policies component of the bill, because it is a separate issue but one that I think is entirely appropriate to deal with in the context of establishing an ombudsman. Family First is very concerned that there is a lack of transparency and teeth in school education policies with respect to the discipline of students, whether they are bullying other students or harassing or attacking teachers.

Having been involved in radio talk-back on this subject and having listened to senior officers from the education department, I now have no confidence in their ability to address harassment and bullying issues in our schools, and I have little confidence that they are there to support the teachers when they are in difficult circumstances. It seems to be that once they get to Flinders Street in the ivory tower, even if they did come from the coalface and the chalkboard, they forget what it is like to be a teacher and working with students on the school campus.

I have here a document dated 1 March 2007 from the Department of Education and Children's Services, which is a policy statement on school discipline. That document concludes by saying that other documents relevant to that policy include, among other things, DECS procedures for the suspension, exclusion and expulsion of students from attendance at school. I note that it is dated 1995. I hope it has been updated since then, because time has moved on. Another policy document is entitled 'Protective practices for staff in their interaction with students'.

These are the types of policies that would relate to bullying and harassment of students and teachers that I believe ought to be run past the Social Development Committee when they are amended. In other words, give the parliament, as representatives of the South Australian community, on behalf of the people, the opportunity to put policy under the microscope. I cannot think of a better place to do that than in the Social Development Committee. The committee effectively has a veto right in relation to that type of policy and I believe the committee, as a representative selection of members of this parliament from all backgrounds, is best placed to say whether proposed policy is adequate to deal with bullying and harassment in schools and, indeed, it has the power to call witnesses to advise it on the proposed policy.

I also believe that the committee would have more time to examine any amendments to policy than has the minister, who has a busy portfolio area. It may be in the best interests of government and the minister to have the committee having an independent look at this in everybody's interests.

On the matter of referrals from the State Ombudsman, or third party service providers, I want to make a summary point, for the sake of clarity, and indicate that this bill will impact upon public and private schools, as well as non-government organisations and companies that provide education services.

This latter aspect covers the element that had to be covered by 2002 so-called 'honesty and accountability' measures in the state Ombudsman Act by ensuring that anyone to whom the government contracts out the provision of education services can be captured by the Ombudsman provisions.

In closing, a child's experience of school should always be a happy one, so far as we can ensure it to be so. School should not be a social experiment. It should not be a jungle environment where the bullies win and the weaklings go into life with potential mental health issues or low self-esteem and total lack of confidence. It is surprising to think in this day and age that the education department is either resigning itself to a certain level of bullying occurring, which seems to be some anecdotal observation, or choosing to take a neutral position in student disputes and thereby failing to uphold justice within schools.

Honourable members might want to quibble with the style of this bill, but I urge them to come to me with amendments or alternative proposals. I think this issue is too important to simply throw out just because a particular model does not fit our own vision.

I think that all members in this house would have had complaints raised with them about bullying and harassment. I believe that we have an obligation to lead the way now to try to make a better school environment for students, parents, teachers, principals and all involved in the education portfolio. Family First urges honourable members, and in particular the government, to take that pragmatic approach when we debate this bill in the coming months.

Debate adjourned on motion of Hon. B.V. Finnigan.