



26 February 2020



Tēnā koe 

Thank you for writing to the Ministry of Education on 17 January 2020 to request further information about a recent child safety incident at Manurewa West Kindergarten (MWK). Your request has been considered under the Official Information Act 1982 (the Act).

The Ministry has responsibility for ensuring early learning services meet the requirements set out in the Education (Early Childhood Services) Regulations 2008 (the Regulations), the Education Act 1989 and associated regulations. The responsibility for investigating any potential criminality sits with NZ Police, and compliance with workplace regulations with WorkSafe NZ.

As previously advised, we undertook a licence assessment to determine if MWK met the requirements of the abovementioned legislation and regulations. The assessment identified breaches of licensing standards relating to governance, premises and facilities, and health and safety, and we acted with urgency. Following our assessment, the kindergarten was placed on a provisional licence on 16 October. Having demonstrated full compliance with the conditions of the provisional licence, the kindergarten's full licence was reinstated on 23 December 2019.

My responses to the individual parts of your request are as follows:

- Question 1** *Was a teacher/carer giving Masua one on one assistance when he fell?*
- Question 2** *How specifically did he fall?*
- Question 4** *Masua's family says he is supposed to get one on one supervision - is that case and if nobody was actively engaged with him at the time - why was this the case?*

Masua had access to early intervention services provided by CCS Disability Action. Early intervention services are funded by the Ministry to provide support to children with disabilities, and their families from birth until the children are settled at school. The day-to-day delivery of these services are the responsibility of the early intervention service providers. Individual arrangements will vary and are influenced by the needs of the family, the children and the early learning service. CCS Disability Action's service is not funded during school holidays, when the incident took place.

As noted above, our role is ensuring early learning services comply with the appropriate legislation and regulations. We checked whether MWK acted as required and in line with their policies and procedures. The incident report provided by MWK was assessed against their documentation. MWK's incident reports are referenced in the document we released to you on 19 December 2019, *Memo: Manurewa West Kindergarten Investigation*.

I refer you to paragraph 56 of *Memo: Manurewa West Kindergarten Investigation*, which notes Police statements that Masua's injuries were consistent with the fall described by Kindergarten staff.

Question 3 *Should the stairs at the centre be fenced/closed off in some way?*

This is a matter for MWK to address in line with its internal risk assessment processes. Regulation 46 and licensing criterion HS12 require early learning services to take all reasonable steps to promote the good health and safety of children, and to prevent accidents to children.

Paragraph 45 of the document we released to you *Memo: Manurewa West Kindergarten Investigation* lists the ten breaches found under Regulation 46.

Question 5 *The report mentions staff ratios and that these were met on the day - however it goes onto say one teacher was on a break at the time of the fall - so were staff/children ratios met at the time of the fall?*

Ratio calculations apply to the whole service, rather than at a room-by-room basis. Adults having lunch, on break or in non-contact times, are not included in ratio counts.

There were sixteen children, all aged over two years, in attendance when the incident took place, supervised by two teachers. This complies with the minimum adult-to-child ratio as specified in Schedule 2 of the Regulations.

Question 6 *Before the October incident and investigation was the Ministry aware of the two other incidents involving Masua? If not why not?*

Question 7 *Should these [incidents] have been reported under incident notification rules?*

Question 8 *Was the October incident reported to the Ministry within an appropriate time frame?*

The incident of 9 October did not meet WorkSafe NZ's threshold of a notifiable injury. Had it done so, MWK would have been required to advise the Ministry and WorkSafe NZ at the same time, in line with licensing criterion HS34. MWK's parent association (Counties Manukau Kindergarten Association – CMKA) reached this conclusion after using WorkSafe NZ's online *Notify WorkSafe Tool*.

With specific regard to **Question 6**, MWK did not notify the Ministry about the two prior incidents at the time they took place. I am not able to say if they would have met the threshold for notifying the Ministry under HS34.

Insofar as **Questions 7** and **8** are about MWK's internal policies and procedures, I refer you to paragraphs 49 to 52 and 62 of *Memo: Manurewa West Kindergarten Investigation*. These note CMKA's notifiable injury, illness and incident policies and procedures were not followed. These policies have now been updated, and all MWK staff received additional training. This was a condition of the centre's provisional licence.

Question 9 *The Manukau kindergarten association manages 25 other centres, what checks have been made to ensure their protocols are [up] to scratch and their staff know what they are supposed to do in an accident?*

As noted in my response to you on 19 December, we also directed CMKA to undertake a full review of its policies and procedures and provide professional development for staff across all 26 CMKA centres.

We discussed providing additional professional development to MWK through the Strengthening Early Learning Opportunities for children, whānau, families and communities (SELO) programme. CMKA opted to focus its resources on addressing issues including the safety of staff and children.

The staff involved in this particular incident received professional development focusing on MWK's updated policies and procedures and individual staff members' own roles and responsibilities.

Question 10 *How often are kindergartens audited to ensure they are up to scratch safety wise? When was this kindergarten last subject to any audit/scrutiny?*

We conduct around seven hundred licence assessments each year, taking a risk based approach to ensure early learning services meet licensing requirements and regulations. Our staff are able to visit early learning services at any time to check that they are complying with licensing standards. We also encourage parents and members of the community to contact us if they have any concerns. When we become aware of issues at a service, we will take the necessary steps to assess the situation and act accordingly.

I am advised there were no previous notifiable incidents or complaints relating to MWK prior to the October incident which necessitated a licence assessment. In November 2018, the Education Review Office (ERO) visited MWK, and rated it 'well placed' to promote positive outcomes for children. Where ERO identifies non-compliances during their reviews these matters are noted in their published reports and referred to us for further action.

Thank you again for your request. If you have any further questions on this issue, we recommend you contact the Ministry's Media Team in the first instance, at media@education.govt.nz.

Under section 28(3), you have the right to refer this response to an Ombudsman. You can do this by emailing info@ombudsman.parliament.govt.nz.

Nāku noa, nā

A handwritten signature in blue ink that reads "PP Katrina Casey". The signature is written in a cursive, flowing style.

Katrina Casey
Deputy Secretary
Sector Enablement and Support

cc Isabel Evans, Director of Education for Auckland