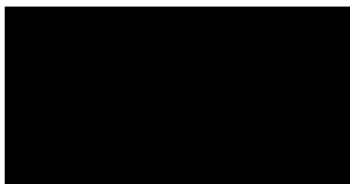




– 2 MAY 2018



Thank you for your email of 4 March 2018 to the Ministry of Education requesting the following information:

1. *Statistics and breakdown of the various interventions the Secretary of Education or Minister of Education has used since 2013 in relation to Section 78 of the Education Act 1989 whereby Board of Trustees have failed in their responsibility in relation to physiological and psychological harm being ongoing on any student or students in a school.*
2. *Acknowledgement of intervention towards the Board of Trustees by the Secretary or Minister of Education under Section 78 when the Ministry acknowledged the Board of Trustees of Pakuranga Intermediate had not fulfilled their legal obligations. The Ministry acknowledged this by allowing the son of Andrew and Tracey Hill to shift schools by directing another school to take their son under Section 11P.*
3. *Confirmation that it is the responsibility of the Ministry of Education not Worksafe to ensure Board of Trustees as the PCBU fulfil their obligations in relation to students physiological and psychological wellbeing.*

Your request has been considered under the Official Information Act 1982 (the Act). We have responded to you questions below.

The role of boards and PCBUs

Schools in New Zealand are self-governing and each school has a board of trustees (board) which is an independent Crown entity. Each board has complete discretion to control the management of their school.

A key role defined by the Health and Safety at Work Act 2015 (HSWA) is the Person Conducting a Business or Undertaking (PCBU). A PCBU is usually an entity rather than an individual. In the case of schools/kura, the PCBU is a school's board – as a collective entity, in the same way the board is the employer of school staff. As the PCBU, the board holds the primary duty of care to ensure the health and safety of everybody involved with the school so far as is reasonably practicable.

The HSWA also introduces a duty for officers of the PCBU. In the case of schools/kura, the board members as individuals, including the principal, are all officers of the PCBU. The duty of an officer is an individual responsibility that is distinct from the collective responsibilities of the board.

The board usually delegates the implementation of health and safety policy to the principal, who develops appropriate procedures and practices to ensure obligations and expectations are met. Although the board may delegate any of its functions or powers, it can never delegate its accountability.

Applications made under section 11P(2) of the Education Act 1989

The decision to direct a school to enrol a student is made in exceptional circumstances and is based on disadvantage. We provide a standard application which requires parents to supply specialist medical or psychological or other expert opinion in support of their application. We are not able to make a direction on the basis of unsupported statements.

Before an application can be approved, the Secretary for Education or the person with delegated authority, must be satisfied that:

- The student is genuinely disadvantaged;
- There is a significant degree of disadvantage;
- The disadvantage can be objectively or reasonably substantiated; and
- The disadvantage can be remedied only by enrolment at the school in question.

The Ministry must take all reasonable steps to consult with the parents of the student, the board of the school concerned and, if appropriate, the student during this process. Once the necessary evidence is supplied the process should be conducted in a timely manner.

Information about 11P Directed Enrolments can be found at:
www.education.govt.nz/assets/Documents/School/Running-a-school/Enrolment-and-attendance/EnrolmentSchemeGuidelineFeb2011a.pdf.

Mr and Mrs Hill's 11P applications

The initial application from Mr and Mrs Hill was declined as there was insufficient expert evidence to reach the threshold required under Section 11P(2)(b). They later provided additional expert evidence, which ultimately supported a decision. In this case it is in the student's interests to change schools.

The Ministry is currently supporting Pakuranga Intermediate in their student wellbeing focus in 2018. The wellbeing focus includes surveys of students and families, a *Positive Behaviour for Learning* refresher training, and upskilling in restorative practice. These supports relate directly to students' physiological and psychological wellbeing at the school.

Reports to Worksafe

Schools are required to promote a safe physical and emotional environment for students. WorkSafe's role is to oversee relevant health and safety legislation and to prevent physical harm to people on worksites and to promote good health and safety practice. When a referral is made to WorkSafe about a school, it relates to the physical safety of the school site, not the mental wellbeing of individual students.

Intervention statistics

The records system the Ministry uses for capturing statutory interventions information uses high level descriptors for Health and Safety. The system does not break down health and safety into subcategories, for example physiological or psychological harm. To enable the Ministry to give you an exact number of interventions put in place for these reasons, we would need to manually retrieve, open and review a number of documents for each intervention. Therefore we are refusing this request under section 18(f) of the Act, as it would require a substantial amount of research and collation of individual intervention files in order to identify which component of National Administration Guideline 5 (NAG 5) the schools did not comply with.

Please note, the Ministry now proactively publishes OIA responses on our website. As such we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Katrina Casey', written over the printed name and title.

Katrina Casey
Deputy Secretary
Sector Enablement and Support