



19 December 2019

[REDACTED]
[REDACTED]
[REDACTED]
CC [REDACTED]

Tēnā koe [REDACTED]

Thank you for your writing to the Ministry of Education on 20 November to request the following information:

- *any report or findings, recommendations or similar in the case of Masua Tusa who was badly injured while at Manurewa West Kindergarten.*

Your request has been considered under the Official Information Act 1982 (the Act).

The safety and wellbeing of children is our top priority. We understand how distressing this has been for the family. Our role is to ensure that early learning services meet the requirements of the Education (Early Childhood Services) Regulations 2008.

I can advise you that Manurewa West Kindergarten was also involved in investigations undertaken by Police, and its parent association, the Counties Manukau Kindergarten Association (CMKA).

CMKA are an experienced early childhood education provider with 26 kindergartens across south Auckland. We worked closely with Manurewa West Kindergarten and CMKA to assess information and provide regulatory advice.

We also undertook a licensing assessment at the service, and reviewed CMKA's policies and procedures. The assessment identified a number of regulations that had been breached. The service was placed on a provisional license, pending correction of these breaches. A provisional licence identifies the conditions that must be met before a full licence can be reinstated. It must be on display and available to parents. Children can still attend a centre after a provisional licence has been issued.

We asked CMKA to undertake a full review of its policies and procedures and provide professional development for staff. We have also offered support through our early learning professional development programme Strengthening Early Learning Services (SELO).

CMKA has opted to focus its resources on addressing a number of issues at the kindergarten, including the safety of children and staff, children's learning and concerns from parents. We agreed to reassess the need for SELO in 2020, against the work CMKA has undertaken to date.

I can also advise you that CMKA's leadership team undertook a review process and supplied us with updated policies and procedures that meet regulatory requirements. It also held professional development sessions with the centre's leadership to ensure all staff with legislative responsibility for the day-to-day care and safety of children at the service are aware of the updated policy and procedures.

The service's staff involved in the incident on 9 October have received professional development from CMKA. This has included a focus on CMKA's updated policies and procedures, as well as a focus on their own roles and responsibilities. We continue to work closely with the service and the kindergarten association.

Your request

There is one document within scope of your request, titled *Memo: Manurewa West Kindergarten Association*, which I am releasing to you as **Document 1**. This document provides findings into investigations we undertook into the service in our capacity as a funder and regulator of early learning services.

A small number of paragraphs in this memo describe information supplied to Manurewa West Kindergarten by the child's family. To protect the family's privacy, I have summarised this information under section 16(1)(e) of the Act.

I have also withheld one paragraph in full under section 9(2)(a), to protect the privacy of natural persons.

Consistent with section 16(2)(c), I have provided these summaries to avoid prejudice to the interests protected by section 9(2)(a) of the Act (privacy of natural persons), which are not overridden by a countervailing public interest. These summaries are as follows:

Paragraph(s)	summary
26-29	<p>These paragraphs note the steps taken by the service during two previous incidents in 2019 involving the child.</p> <p>The paragraphs note that the staff attending the incidents did not act in accordance with CMKA policies, as described in paragraph 50 of the memo.</p>
9; 30-33	<p>These paragraphs note the service's four attempts to contact the child's mother on 9 October.</p> <p>The paragraphs note that the information on the child's contact form was not complete.</p>

Thank you again for your request. If you have any further questions on this issue, please 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



Katrina Casey
Deputy Secretary
Sector Enablement and Support

cc Isabel Evans, Director of Education for Auckland



To: Isabel Evans, Director of Education, Auckland

From: Yvette Guttenbeil-Po'uhila, Manager Education, Auckland

Cc: Tanya Harvey, Deputy Director Education, Auckland

Date: 18 November 2019

Subject: Manurewa West Kindergarten Investigation

Purpose

1. This briefing provides investigation findings into a serious incident at Manurewa West Kindergarten (MWK) on 9 October 2019.
2. You are asked to note the recommendations and approve that MWK license is re-classified onto a second Provisional Licence on the basis that MWK does not satisfy all regulatory requirements of Regulations 45, 46 and 47.
3. You are asked to consider the recommendation to request Counties Manukau Kindergarten Association (CMKA) undergo a full review of policies and procedures, implement a professional development programme for staff and Ministry can provide SELO support where relevant.

Background

4. Unless otherwise stated, any reference to regulations refers to the Education (Early Childhood Services) Regulations 2008.
5. Manurewa West Kindergarten is one of 26 kindergartens managed by CMKA.
6. CMKA also own and manage three Early Learning Centres.
7. On 9 October 2019, at approximately 1:26pm, 4yr old Masua Tusa, who has cerebral palsy fell down stairs while in his wheelchair onto a concrete surface. He suffered facial injuries and bumps to his head.
8. The teacher present at the time applied first aid, made an assessment and decided not to seek further advice or medical assistance. The decision to not call Head Office and further assess the incident to inform support required is contrary to the policy and procedure CMKA have for notifiable injuries, illness and incidents.

9.

refer to summary in response letter

10. After picking up Masua, on 9 October at approximately 4pm, Milly took him to the doctor and reported the incident to the Police.
11. The Police visited MWK as a routine follow-up on 10 October 2019, after Milly made a report to them about the incident. Police continue to collect information to determine whether they will progress to full investigation. We are working closely with the Police under the multi-agency framework.
12. On 10 October, CMKA notified the Ministry of Education of the incident and we requested incident reports.
13. On 11 October, the Traumatic Incident team and Education Advisors went out to the centre. They met with teachers and CMKA CEO to assess the situation.
14. Support was offered, an initial check around the premises and facilities for immediate safety issues was conducted and no obvious immediate risk to children identified. A further request for incident reports and documentation was made to MWK and CMKA.
15. A full licensing assessment on site at the Kindergarten was made 17 October 2019, and the Centre was put on a provisional licence on that date.
16. Milly later posted her disappointment and images of Masua's injuries on of her FaceBook page which attracted a lot of public attention and was subsequently picked up by the NZ Herald, RNZ Checkpoint and other media outlets.
17. The story has gained a lot of media and political attention.
18. Milly contacted the Ministry 19 October via email with an official complaint.

Licensing Assessment and Findings

Initial Findings from 11 October visit

19. A review of the teacher incident reports was assessed against the CMKA notifiable injury, illness and incident policy and procedure.
20. An immediate breach was identified under HS27, as the teacher who attended to the boy's injuries decided not to seek further advice or support or medical treatment. The policy clearly states to contact head office for further considerations. The teacher's actions was not in accordance to CMKA policy and procedures.
21. Further review of teacher information identified the teacher did not know the details of the policy and procedure. A second immediate breach of GMA 7 was identified about staff responsibilities.
22. On 17 October, the MWK licence was re-classified from full to provisional with conditions for the breaches HS27 and GMA7 identified to be met by 31 October 2019.

Breach	Condition to be met by 31 October 2019
Reg:46 HS27 The service did not take all practicable steps to get immediate medical assistance for a child who was seriously injured.	The Service Provider must provide a copy of the service's procedure outlining the service's response to injury illness and incidents.

	The service provider must provide evidence of a review of the service's response to the incident on 9 October 2019.
Reg47: GMA7 The teaching staff did not follow the correct procedure for responding to the serious incident.	The service provider must provide evidence all staff have been provided with professional development on the procedures for responding to injuries, illness and incident. The evidence is to include confirmation that staff have an understanding of their responsibilities in responding to injuries, illness and incidents and they agree to implement the procedures.

Milly Tusa's complaint and Checkpoint interview

23. On 15 October, Milly was interviewed by RNZ Checkpoint, where she stated, Masua had previously had other incidents at the centre. At that interview she also stated she had not received any missed calls from MWK on 9 October. Milly questioned why MWK did not contact other people known to centre staff.

Previous incidents:

24. Under Reg46: HS34: Incident Notification to the Ministry; where there is a serious injury or illness or incident involving a child at the service that is required to be notified to a specific agency, the service provider must also notify the ministry of education at the same time.
25. We requested reports of any Notifiable Illness/Accident/Incident reports for Masua and were given two reports where he had two falls from his wheelchair at the centre in February and June 2019.

26.

27.

refer to summary in response letter

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29.

Contact People and Details:

30.

31.

refer to summary in response letter

32.

33.

refer to summary in response letter

34.

s 9(2)(a) OIA

35. On 18th October, Milly rang the Ministry to make an official complaint. She followed up with an email on 19th October. The complaint was a request to investigate what happened to Masua.

Full Assessment and Findings

Detailed information about each breach, are included on the attachments - the EC3 assessment form and photographic evidence of documentation and premises and facilities.

Ratio

36. There were 16 children attending 9 October with three teachers rostered. The adult:child ratio was met on the day.

37. However, at the time of the incident, supervision of children indicate one teacher to 12 children in the outdoor area and one teacher to 4 children inside. The third teacher was on a break at the time of the fall. She came to help the head teacher manage the incident.

Governance, Management and Administration (GMA) Regulation: 47

38. Eight breaches were found under GMA Reg 47, they are;

- i. GMA 4: Parent Involvement
- ii. GMA6: Self-Review
- iii. GMA7: Human Resource Management
- iv. GMA7a: Safety Checking
- v. GMA8: Annual Plan
- vi. GMA9: Annual Budget
- vii. GMA10: Enrolment Records
- viii. GMA11: Attendance Records

39. The current provisional licence addresses GMA7 with the condition to be met;

- i. The service provider must provide evidence that all staff have been provided PD for procedures for responding to injuries, illness and incidents. The evidence is to include confirmation that staff have understanding of their responsibilities in responding to injuries, illness, and incidents and agree to implement procedures.

40. The GMA breaches indicate poor record keeping, lack of opportunities for parent involvement and insufficient staff self-review process and documentation.

41. Practice is not consistent with CMKA policies and procedures.

Premises and Facilities (PF) Regulation 45

42. Four breaches were found under PF Reg 47, they are;

- i. PF13: Outdoor Activity Space
- ii. PF16: Kitchen Facilities
- iii. PF25: Nappy Changing Facility
- iv. PF26: Body Wash Facility

43. PF breaches are minor issues that require immediate attention but can be remedied quickly and pose no immediate or high risk to children.

44. Practice is not consistent with policy and procedures.

Health and Safety (HS) Regulation 46

45. Ten breaches were found under HS Reg 46

- i. HS2: Laundering
- ii. HS6: Securing Furniture
- iii. HS7: Emergency Plan
- iv. HS12: Hazard Checklist
- v. HS18: Travel by Motor Vehicle
- vi. HS24: Room Temperature
- vii. HS27: Medical Assistance
- viii. HS28: Medical Administration
- ix. HS29: Medical Training
- x. HS30: Children Washed When Soiled

46. The current provisional licence addresses HS27 with the condition to be met;

- i. The service provider must provide a copy of the service's procedure outlining the services response to injury, illness and incidents. The service provider must provide evidence of the review of the incident on the 9th of October 2019.

47. The review of HS identifies serious breaches across practice, record keeping and documentation in all the identified criteria.

48. Practice is not consistent with policies and procedures.

Summary of Assessment

49. The incident on 9th October did not follow CMKA notifiable injury, illness and incident policy and procedures.

50. CMKA policy and procedure requires staff to apply first aid, assess the child and situation, contact parent/emergency contact and call head office for further advice and support. A list of considerations regarding the injury, illness or incident will be made which will then lead to further action, including contacting an ambulance. This is superseded in cases of urgent emergency where immediate medical attention is sought.
51. Documentation indicate that staff were not familiar with CMKA policies and procedure and therefore did not administer their full responsibility at the time of the incident. Staff did not contact head office for further support and advice.
52. Two incidents earlier in the year where Masua fell from his wheelchair show that the full procedure was not implemented therefore, poor practice is consistent with staff not understanding their full responsibility under the CMKA notifiable injury, illness and incident policy and procedure.
53. Breaches under PF require attention however, with improved consistent practice the breaches can quickly meet compliance.
54. Breaches under HS require immediate attention as again, much of the policy and procedures are compliant however, practice, professional development and good self-review is lacking.
55. Breaches under GMA require a review of policy and procedure and a schedule for professional development across the CMKA network is required.

Other Agencies

56. The Police sought medical opinion and found that Masua's injuries were consistent with the fall as described by the centre staff. No criminal intent or activity was found.
57. On 1 November 2019, the Police concluded their investigation and have closed the case, and have advised Milly.
58. They were concerned about the similarity of the June and October incidents and the lack of medical assistance or follow up by staff and suggest process and procedure professional development with staff be implemented to ensure they understand their responsibilities when a serious incident occurs at the centre.
59. Teacher Council have been informed and will conduct their own investigation once the Police and Ministry complete their investigation.
60. CMKA have notified WorkSafe NZ

Counties Manukau Kindergarten Association

61. On 13 November, we met with CMKA, CEO and HR Manager to discuss the findings of the full assessment and conditions of the current provisional license. They provided more information that has been assessed.
62. The conditions of the current provisional license has been met.
63. The additional breaches identified on 17 October during the full assessment visit was provided to CMKA on 13 November and they have two weeks to meet compliance. Once relevant changes are made and evidence provided the current provisional license will be re-classified to full however, if breaches remain non-compliant a new provisional license will be issued with new conditions.

64. We discussed the need for CMKA to undertake a review across all their services to ensure policies and procedures are understood and specific to each individual centre layout and environment.

Recommendations

65. I recommend that you:

Note the Ministry has conducted a full investigation into the incident for Masua Tusa, including consideration of relevant matters

Approve that Manurewa West Kindergarten is placed on a second Provisional Licence if breaches identified during the on-site assessment and documentation review is not met by 27 November 2019. Yes / No

Agree to request CMKA to undertake a full review of policies and procedures and provide professional development for staff to ensure practice is consistent with policy and procedure, and to provide us with a copy of their plan. Yes / No

Agree that SELO is offered to CMKA to support where appropriate for staff professional development Yes / No

Yvette Guttenbeil-Po'uhila, Manager Education

Date

Endorsed / Not Endorsed

Tanya Harvey, Deputy Director of Education

Date

Approved / Not Approved

Isabel Evans, Director of Education, Auckland

Date

Appendix: Supporting Documents

1. EC3 Governance, Management and Administration assessment and findings
2. EC3 Premises and Facilities assessment findings
3. EC3 Health and Safety assessment findings
4. List of breaches and evidence required sent to CMKA

RELEASED UNDER THE OFFICIAL INFORMATION ACT