

██████████
Person with Management or Control
ACT Education Directorate
RE: Torrens Primary School – Preschool Unit

Email: ██████████ (Remove contain preshool official email id)

Dear ██████████

Decision to issue Administrative Action RE: NOT-40727869

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA), recently conducted an assessment into a Notification of Incident (NOT-40727869) advising of an incident at Torrens Primary School – Preschool Unit SE-00011226 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider) on 16 June 2022.
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations 2011 (the Regulations)* are provided for your convenience at the end of this Decision.

Facts

3. On 17 June 2022, the Authority received a Notification of Incident (NOT-40727869) from the Provider, advising that on 16 June 2022 two enrolled children of the Service, known to be ██████████ (5 years) and ██████████ (4years), were not seen exiting the Service premises, and was subsequently found outside of the Service by a non-staff member. Refer copy of NOT-40727869 at Attachment A.
4. On 21 June 2022, additional information was requested by the Authority from the Provider, which was responded to same day. Additional information confirmed that although the children’s nonattendance was identified at 12:35 when ██████████ father alerted the Service, the last accountability of the two children at the Service premises by educators was at 12:20pm. Refer copy of correspondence at Attachment B.

Law

5. Evidence submitted via NOT-40727869 and supporting documentation engages the following sections of the *Law* and the *Regulations*:

Section 165(1) of the *Law* - Offence to inadequately supervise children

The approved provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Section 167(1) of the *Law* - Offence relating to protection of children from harm and hazards

The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury.

Reasons

6. Having considered all documents submitted by the Provider the Authority is satisfied that the Provider has failed to comply with the *Law*.
7. The Authority is satisfied that sections 165(1) and 167(1) of the *Law* were contravened on 16 June 2022. Sections 165 and 167 of the *Law* were engaged by documentation obtained from the Provider.
8. Information gathered supports that the Provider did not ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that Service, in contravention of section 165 of the *Law*.
9. Information gathered supports that the Provider, by not ensuring adequate supervision of children, has not appeared to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167 of the *Law*.
10. The fact that [REDACTED] were able to leave the Service premises, via using resources to climb over a fence, unnoticed by educators, further supports the contraventions of sections 165 and 167 of the *Law*.
11. In addition, the fact that educators appear to not have been able to visually account for the children after 12:20pm, and educators were not aware that the two children were no longer at the Service until alerted by [REDACTED] father at 12:35pm supports that [REDACTED] were unaccounted for and missing for a prolonged period of approximately 40 minutes – posing a significant risk to their health, safety and wellbeing.

Decision

12. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
13. In determining this outcome, the Authority took into consideration the actions advised of being undertaken by the Provider at the time of the incident, and the compliance history of the Service.
14. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
15. In addition to the above, the Provider is requested to submit documentation and evidence to demonstrate that the Nominated Supervisor and all educators are aware of, and understand, the expectations and obligation to ensure that all children being educated and cared for by the service are adequately supervised at all times and protected from harms and hazards when in the care of that Service, for example, evidence of:
 - (a) Evidence of reviewed supervision policies, practices and procedures in relation to the active supervision of children to mitigate risk of a child being unaccounted for or missing.
 - (b) Evidence to support that the Nominated Supervisor and all educators are aware of, and understands, policies, procedures and practices relevant to supervision.

(c) Evidence supporting that a risk assessment has been undertaken to identify potential risks and hazards in the outdoor environments, and how these risks will be managed and/or mitigated.

16. The required evidence should be submitted to the Authority by close of business 14 days from the date of receipt of this Decision. Information can be sent by email to janine.fairburn@act.gov.au or by post to:

Authorised Officer, Janine Fairburn
Children's Education and Care Assurance (CECA)
ACT Education Directorate
PO Box 158, CANBERRA ACT 2601

17. This Decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments or waivers. It may also be considered in determining the action to be taken, should further breaches of the *Law* or associated *Regulations* be found.
18. For your convenience, and to support future compliance, please find web addresses to relevant legislation:

The *Law* applies to you as an approved provider and any service that you operate. The *Law* is applied in the ACT by the *Education and Care Services National Law (ACT) Act 2011* <http://www.legislation.act.gov.au/a/2011-42/default.asp>.

The *Law* and *Regulations* can be viewed at: <http://www.acecqa.gov.au/national-law>, and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

19. If you have any queries regarding this Decision, please contact me via email at janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and care Regulation and Support
ACT Education Directorate

8 July 2022