

Mr [REDACTED]  
Person with Management or Control  
ACT Education Directorate  
RE: Gold Creek School – Nicholls Preschool Unit

Email: [REDACTED]

Dear Mr [REDACTED]

**Decision to issue Administrative Action**

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, investigated suspected offences relating to the operation of Gold Creek School – Nicholls Preschool Unit SE-00011215 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
2. Web addresses to the Law and the *Education and Care Services National Regulations (the Regulations)* are provided for your convenience at the end of this decision.

**Facts**

3. In March 2023, the Authority received a complaint relating to the operation of the Service. Allegations included matters regarding inadequate supervision at the Service. Due to the risk of harm and hazards to children engaged by the allegation, the Authority determined to investigate.
4. On 27 October 2023, the Authority sent the Provider a Show Cause Notice (the Notice) for the purpose of affording opportunity to respond to the allegation and to ensure procedural fairness. Refer copy of the Notice (minus attachments due to size, noting these can be provided to you again upon request) at Attachment A.
5. The Notice outlined the grounds for issue, and the evidence relied on by the Authority advising of the allegations. In addition, the Notice outlined the compliance actions being considered by the Authority should the allegation be substantiated.

**Allegations**

6. The allegations were noted as follows:

**Allegation One**

It is alleged that on 27 February 2023, the Provider failed to ensure that all children being educated and care for by the service, were adequately supervised at all times, contravening section 165(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

**Allegation Two**

It is alleged that by 2 March 2023, the Provider failed to notify the Authority of a complaint alleging contravention of the *Law*, in contravention of section 174(2) of the *Law*.

### Allegation Three

It is alleged that on 5 May 2023, the Provider failed to take reasonable steps to ensure prescribed records were accurate, in that, child attendance records were not kept in compliance with Government policy pursuant to *Regulation 158(2)* and therefore *Regulation 158(1)*, contravention *Regulation 177(2)*.

7. On 13 November 2023, the Authority received the Providers response to the Notice along with supportive documentation (Attachments A through R). Refer to a copy of the response (minus attachments due to size which can be provided again upon request) at Attachment B.

### Law

8. The following provisions of the Law are relevant to the Allegation:

#### **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.

Penalty: \$10 000, in the case of an individual  
\$50 000, in any other case.

#### **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.

Penalty: \$10 000, in the case of an individual  
\$50 000, in any other case.

#### **Section 174 - Offence to fail to notify certain information to Regulatory Authority**

(2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
  - (i). that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
  - (ii). that this Law has been contravened;
- (c) information in respect of any other prescribed matters.

Penalty: \$4000, in the case of an individual.  
\$20 000, in any other case.

(4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed timeframe to –

- (a) The Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

**Regulation 176 – Time to notify certain information to Regulatory Authority.**

- (2) For the purposes of section 174(4) of the Law, a notice must be provided—
- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident

**Regulation 177 – Prescribed enrolment and other documents to be kept by provider.**

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –
- (b) An incident, injury, trauma and illness record as set out in regulation 87;
  - (k) A children’s attendance records as set out in regulation 158;
- (2) The approved provider of the education and care service must take all reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.
- Penalty: \$2000
- (3) Subject to Subdivision 4, the approved provider of the education and care service must ensure that-
- (a) Subject to sub regulation (4), the documents referred to in sub regulation (1) in relation to a child enrolled at the service are made available to a parent of the child on request.

**Regulation 158 – Children’s attendance record to kept by provider**

- (1) The approved provider of an education and care service must ensure that a record of attendance is kept for the service that-
- (a) Records the full name of each child attending the service; and
  - (b) Records the date and time each child arrives and departs; and
  - (c) Is signed by one of the following persons at the time that the child arrives and departs-
    - (i). The person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
    - (ii). A nominated supervisor or an educator.
- (2) A preschool program provided by a school is not required to comply with sub-regulation (1) if it keeps attendance records in accordance with the education law, or Government education department policy, of the participating jurisdiction.

**Obligations upon Regulatory Authority**

9. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely
- ‘To ensure the safety, health and wellbeing of children attending education and care services; ...’*
10. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
- (a) that the rights and best interests of the child are paramount; ...
  - (f) that best practice is expected in the provision of education and care services.
11. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:

(c) to monitor and enforce compliance with this *Law*;

(d) to receive and investigate complaints arising under this *Law*.

12. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
13. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

### **Decision**

14. After careful consideration of the Providers response and all available evidence, the Authority is satisfied that, on the balance of probabilities, there is insufficient evidence to substantiate a contravention of section 165(1) engaging s167(1) of the *Law* against the Provider in this instance.
15. However, the Authority is satisfied, on balance of probabilities, that there is sufficient evidence to support substantiation of section 174(2) of the *Law*. In addition, the Authority is satisfied that *Regulation 177(2)* has also been breached in this instance.
16. Regarding Allegation One, the Authority is satisfied that the evidence did not weight sufficiently to the elements of the offences to support substantiating a case of inadequate supervision occurring, or that reasonable precautions had not been taken to protect children from harm or hazard likely to cause injury or illness.
17. When coming to this decision, the Authority considered the timeframes identified as children allegedly unsupervised, circumstances and environment engaged at the times of the alleged inadequate supervision, witness accounts, and evidence of actions and processes undertaken by the Provider in relation to ensuring and improving practices related to the supervision, education, and care of children.
18. Regarding Allegations Two and Three, the Authority is satisfied that that the Provider failed to notify the Authority of a complaint alleging contravention of the *Law*. It is noted that the Provider accepted that by failing to notify the Authority of the complaint, the Provider contravened section 174(2) of the *Law*.
19. Regarding substantiated breach of *Regulation 177*, the Authority is satisfied that the Provider failed to take reasonable steps to ensure prescribed records were accurate, in that, child attendance records were not kept in compliance with Government policy pursuant to *Regulation 158(2)* and therefore *Regulation 158(1)*, in contravention of *Regulation 177(2)*.

20. The Provider's admissions in relation to Allegation Two, and acknowledgement that there were some inconsistencies in its Enrolment and Attendance Policies, which may create confusion about what attendance records are required to be kept in Preschool settings further supports the breach.
21. The Authority acknowledges evidence submitted by the Provider, in response to the Notice, that demonstrates numerous actions subsequently taken by the Provider to improve compliance at the Service and mitigate risk of similar non-compliance moving forward.
22. 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.
23. In consideration of all relevant information, and actions already undertaken by the Provider to mitigate risk of similar incidents occurring the Authority has determined not to initiate statutory compliance action regarding the substantiated breaches of the Law and Regulations, but rather issue this Administrative Decision to address the non-compliances.
24. This Decision will be recorded on your Service file and may also 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 Regulations be found.
25. If you have any questions relating to this letter, please contact me by way of email at [Janine.Fairburn@act.gov.au](mailto:Janine.Fairburn@act.gov.au).

Yours sincerely



Janine Fairburn  
A/g Director – Regulatory Operations  
Children's Education and Care Assurance  
Education and Care Regulation and Support

5 February 2024