



**ACT**  
Government

Education and Training

[REDACTED]  
Person with Management or Control  
ACT Education Directorate  
RE: Gilmore Primary School – Preschool Unit

Email [REDACTED] [\[REDACTED\]@act.gov.au](mailto:[REDACTED]@act.gov.au)

Dear Ms [REDACTED]

### **Decision to Issue Administrative Action**

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated suspected offences under the *Education and Care Services National Law (ACT)* (the *Law*) relating to Gilmore Primary School – Preschool Unit SE-00011101 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider).
2. The suspected offences related to failure to notify the Authority of prescribed matters during Term 1, 2021.
3. Web addresses for the *Law* and the *Education and Care Services National Regulations 2011* (the *Regulations*) are provided for your convenience at the end of this decision.

### **Background**

4. On 1 April 2021, the Provider notified the Authority of an incident earlier that day involving a student ([REDACTED]) who had become escalated, engaged in aggressive physical contact towards another student, and been suspended (NOT-40526126).
5. Information uploaded with NOT-40526126 indicated that previous notifiable incidents may have taken place.
6. Due to the risk to children that may arise if the Authority is not notified of all prescribed matters so as to enable appropriate action to be taken if required, the Authority determined to investigate suspected offences of failure to notify.

### **Allegation**

7. It was alleged that the Provider had failed to notify the Regulatory Authority of seven prescribed matters between 1 February 2021 and 31 March 2021, being circumstances arising at the Service which pose a risk to the health, safety and wellbeing of children, in contravention of section 174(2) of the *Law*.

8. On 15 June 2021 the Authority issued the Provider with a Show Cause Notice (SCN). Refer Attachment A for the SCN. Attachments to the SCN have not been included with this Decision but can be produced upon request.
9. On 25 June 2021, the Provider produced a response to the SCN, being a three-page letter Refer Attachment B for the Response.

Allegation One – Relevant Legislation

10. Provisions of the *Law* and *Regulations* relevant to the Allegation are:

**Section 174 of the *Law* - 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-
    - (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 time to –
    - (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

**Regulation 175 – Prescribed information to be notified to Regulatory Authority**

- (2) For the purposes of section 174(2)(c) of the *Law*, the following matters are prescribed:
  - (c) any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service.

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

- (2) For the purposes of section 174(4) of the *Law*, a notice must be provided-
  - (c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

### Allegation– Evidence and Submissions

11. Evidence gathered relevant to Allegation One consisted of records of incidents regarding [REDACTED] between 1 February 2021 and 1 April 2021, of which there were eighteen. Eight incidents appeared to be notifiable as circumstances arising at the Service which posed a risk to the health, safety or wellbeing of children. One incident (on 1 April 2021) had been notified as required to the Regulatory Authority.
12. The Response provided further information regarding the seven incidents which were not notified, clarifying circumstances and that the use of certain language was used to trigger the engagement of NSET/SAP.
13. The Authority has reviewed the additional information and determined that the incident of 10 February 2021 (number 1179) should have been notified as a circumstance arising at the Service which posed a risk to the health, safety and wellbeing of children. The remaining six incidents appear unlikely to be notifiable, based on the additional information provided in the Response.

### Decision

14. For the reasons outlined above, the Authority is satisfied that the Provider failed to notify one prescribed matter to the Regulatory Authority, being a circumstance arising at the Service on 10 February 2021 which posed a risk to the health, safety and wellbeing of children, in contravention of section 174(1) of the *Law*.
15. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance, for example fines or compliance notices through to suspension of your service approval and/or prosecution. Many of these options allow the Authority to publish details of your non-compliance.
16. Considering the evidence, the objectives and guiding principles of the *Law*, and the steps taken by the Provider, the Authority has determined to issue this Administrative Letter in preference to statutory compliance action.
17. The steps taken by the Provider in response to the Show Cause Notice included discussion with the Nominated Supervisor, who will also be receiving a formal letter regarding the obligation to ensure the Provider is notified of incidents within the required time frame to submit notifications through the NQAITS Portal. Additional supports are being put in place for [REDACTED] which are not directly relevant for the purposes of the investigation.
18. The steps taken by the Provider meet the expectations of the Authority. Accordingly, no further steps by the Provider will be required and, unless further relevant information is received, the Authority considers this matter closed.

19. The substantiated breach of section 174 of the *Law* has been recorded on the Service file and may be considered by the Authority when considering any further applications for service approvals in the ACT.

**Legislation**

20. 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>.

21. 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>

22. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman by email at [tanya.masterman@act.gov.au](mailto:tanya.masterman@act.gov.au).

Yours sincerely



Jo Williams  
Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support  
ACT Education Directorate

15 July 2021