

- f) Parents of the other children were notified.
7. On 7 December 2020, additional information was requested from the Provider, and received on 9 December 2020 (Refer email Correspondence at [Attachment B](#)). Additional information and supportive evidence of actions included:
- a) Incident report;
 - b) Educator statements from [REDACTED] [REDACTED] and [REDACTED]
 - c) Discussion records;
 - d) Child Protection and Supervision policy reflection questions; and
 - e) Attendance Summary report.
8. Educator statements indicated that educator [REDACTED] was on her own in the back room of the preschool serving lunch to over 20 children at approx. 12:30pm when the incident occurred, with the other three educators allocated to the preschool located in the front room. Refer statements at [Attachment C](#).
9. Attendance summary report indicated 33 children enrolled in the preschool on 3 December 2020. Team Member to Child Ratio Check (TMCRC) records indicated that there were up to 38 children in the preschool with 36 children present at the time of the incident on 3 December 2020 understood to be at close to or around 12:30pm. Refer relevant records at [Attachment D](#).
10. Working Directly with Children (WDWC) records indicated that eight educators were engaged in the preschool on 3 December 2020 at varying times, with six educators recorded to be WDWC at 12:30pm. Refer WDWC records at [Attachment D](#).
11. It is noted that the WDWC and the TMCRC do not appear to correlate. In addition, it is noted that educator statements indicates that [REDACTED] [REDACTED] returned to the room after programming and her lunch break at 12:45pm, yet this does not correlate with the WDWC records.

Law

12. Provisions of the *Law* relevant to the assessment engaged the following:

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.

Regulation 177 – Prescribed enrolment and other documents to be kept by approved 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-
 - (h) in the case of a centre-based service, a record of educators working directly with children as set out in relation 151;
 - (k) a children’s attendance record as set out in regulation 158.
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in subregulation (1) are accurate.

Decision

13. The Authority has considered all the information supplied by the Provider, and is satisfied that inadequate supervision contributed to an enrolled child, ██████████ (four years old), to be cornered against the back wall with his pants down and four peers taking turns kissing his bottom on 3 December, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.
14. 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.
15. In determining this action, the Authority considered the steps already undertaken and demonstrated by the Provider in managing the incident and associated risks, and the compliance history of the Service.
16. In regard to substantiated offences under sections 165 and 167 of the *Law*, the Authority requires the Provider to submit the following to demonstrate compliance:
 - a) Revised supervision plans for the preschool to ensure adequate supervision at all times that children are being educated and cared for, along with evidence to demonstrate that these revised plans have been communicated to all educators, and that they are aware of and understand the importance of supervision to mitigate risk of harm and hazard to children;
 - b) Evidence to demonstrate that steps advised of by the Provider at Paragraph 6(d), (e) and (f) of this Decision have been actioned;
 - c) Evidence of any other strategy that the Provider may have implemented to mitigate the risk of a similar incident occurring.
17. In regard to substantiated breach of *Regulation 177(2)*, the Provider is required to submit evidence to demonstrate that WDWC records and Child Attendance records are monitored for accuracy, and that educators are aware of and understand the importance of ensuring that prescribed records are completed accurately at all times.

18. Submission of response is required by close of business **5 January 2021**, to be forwarded via email to me at janine.fairburn@act.gov.au or by post to:

Children's Education and Care Assurance
Attention: Janine Fairburn
GPO Box 158, Canberra ACT 2601.

19. This Decision is issued to remind the Provider that at all times, 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.

Legislation

20. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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 National Law is made up of an Act and Regulations which can be viewed at:
<http://www.acecqa.gov.au/national-law>, and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

22. Should you have any questions about this Decision please contact me at janine.fairburn@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

18 December 2020