



Ms [REDACTED]
Person with Management or Control
Guardian Community Early Learning Centres Pty Ltd
RE: Guardian Early Learning Centre Forde

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40765311) relating to the operation of Guardian Early Learning Centre Forde, SE-00009804, (the Service) operated by Guardian Community Early Learning Centres Pty Ltd, PR-00000823 (the Provider).
2. The Notification related to a circumstance where two nursery children enrolled at the Service appeared to be missing/unaccounted for an unknown length of time on 24 August 2022.
3. Web addresses to the *Education and Care Services National Law Act (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

4. On 25 August 2022, the Authority received NOT-40765311 from the Provider, advising that the Centre's Assistant Director, walking down a corridor to commence a lunch break, witnessed two children, known to be [REDACTED] and [REDACTED], playing on the floor in the front office.
5. The children were returned to the Nursery 2 room by the Assistant Manager and educators were alerted of the incident. Refer copy of Notification at Attachment A.
6. Additional evidentiary documents submitted with NOT-40765311 were as follows:
 - a) Active Supervision Checklist dated 24/08/2022.
 - b) Enrolment records for [REDACTED] and [REDACTED]
 - c) Copy of a serious incident report.
 - d) Child attendance and educator attendance records for 24/08/2022.

7. The Authority noted that the Provider advised that they would be undertaking an internal investigation of the incident.

Law

8. The facts as outlined in the Notification and additional submitted information engaged the following:

Section 165(1) of *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.

Decision

9. The Authority has considered the information supplied by the Provider and is satisfied, on balance of probabilities, that there is sufficient evidence to substantiate an offence under section 165 of the *Law*, engaging an offence under section 167 of the *Law* in this instance.
10. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured adequate supervision at all times, which resulted in [REDACTED] and [REDACTED] being able to leave the nursery space and enter the Service's front office, unnoticed by educators. The very nature of the incident and management of matter supports the contravention being determined.
11. Furthermore, the Authority is satisfied that the Provider, by not ensuring adequate supervision of all children at all times, has not ensured all reasonable precautions have been taken to protect children, specifically [REDACTED] and [REDACTED] in this instance, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.

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.
13. Considering the evidence, the objectives and guiding principles of the *Law*, and the compliance history of the Service, the Authority has decided to issue this administrative action rather than statutory compliance actions.
14. In relation to substantiated offences engaged by the Provider under sections 165 and 167 of the *Law*, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:
 - a) Risk assessments have been reviewed to take into consideration children being able to move around the Service unnoticed, and what steps have been implemented to mitigate this from occurring; and
 - b) Any changes to practice have been communicated to educators to ensure that staff are aware of and understand the Provider's expectations in relation to supervision.
15. In addition, the Provider is requested to submit the findings and outcome of the internal investigation undertaken to obtain further information and ascertain timeframes relevant to this incident.
16. Requested information outlined in paragraphs 14 and 15 can be submitted to Authorised Officer, Vittorio Colosimo at vittorio.colosimo@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.
17. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of all children at all times. 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.
18. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in determining the action to be taken, should further similar breaches of the *Law* or *Regulations* be substantiated.

Legislation

19. The *Law* applies to you as a provider and any service 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>.

20. 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>

21. Should you have any questions about this Decision please contact Authorised Officer
Vittorio Colosimo at Vittorio.colosimo@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 September 2022