

Ms [REDACTED]  
Person with Management and Control  
Guardian Community Early Learning Centres Pty Ltd  
T/A Guardian Childcare & Education Bruce

Email [REDACTED]

Dear Ms [REDACTED]

### Decision to Issue Administrative Letter

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an investigation into complaints relating to the operation of Guardian Childcare & Education Bruce SE-40004913 (the Service), operated by Guardian Community Early Learning Centres Pty Ltd PR-00000823 (the Provider).
2. The complaint related to allegations of inadequate supervision of children at the Service in April 2020.
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 letter.
4. I am satisfied that the Provider was not complying with the provisions of the *Regulations* in respect to prescribed records at the Service.
5. Evidence was, however, insufficient to substantiate an offence of inadequate staffing and supervision under the *Law*.

### Facts

6. On 6 March 2020, the Provider notified the Authority of a complaint alleging that a child aged 6 months [REDACTED] had been repeatedly bitten over the preceding three weeks due to inadequate supervision (NOT-40422338).
7. On 17 March 2020, the Authority received a direct complaint alleging that the same child was bitten. On 18 March 2020, the Provider notified the Authority of the same complaint (NOT-40425136). Records provided as part of the initial assessment process indicated that staffing levels may be inadequate.
8. Due to the high risk of children being exposed to harm and hazards when staffing and supervision are inadequate, the Authority conducted an investigation into a suspected offence of inadequate staffing (section 169), which engages additional offences of inadequate

supervision (section 165) and failure to take reasonable precautions to protect children from harm and from hazards likely to cause injury (section 167).

9. On 28 July 2020, a show cause notice (Notice) was issued to the Provider. Refer Attachment A. Attachments to the Notice have not been included due to size.
10. On 12 August 2020, a response to the Notice (Response) was received from the Provider. Refer Attachment B. Attachments to the Response have not been included due to size.
11. Evidence produced with the Response indicated that minimum prescribed staffing levels were met at all times during which children were being educated and cared for. The ratio analysis carried out by the Authority, which was included with the Notice, was demonstrated not to reflect staffing levels at the Service, as:
  - a. numerous children in the Toddler room were aged over 3 years (the analysis had been conducted on the assumption that the ratio in that room was 1:5); and
  - b. there were numerous instances of educators working directly with children but not having signed in on working directly with children records.
12. Accordingly, the allegation of inadequate staffing has not been substantiated.
13. However, as acknowledged by the Provider, numerous inaccuracies in working directly with children records were identified.

### **Relevant Regulations**

#### **Regulation 13 – Meaning of *working directly with children***

For the purpose of these Regulations a person is working directly with children at a given time if at that time the person –

- a) Is physically present with the children; and
- b) Is directly engaged in providing education and care to the children.

#### **Regulation 122 –Educators must be working directly with children to be included in ratios**

An educator cannot be included in calculating the educator to child ratio of a centre-based service unless the educator is working directly with children at the service.

#### **Regulation 151 – Record of educators working directly with children**

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information –

- a) The name of each educator who works directly with children being educated and cared for by the service;
- b) The hours that each educator works directly with children being educated and cared for by the service.

**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;
- (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.

**Reasons**

14. As set out above, the offence of inadequate staffing was not substantiated on the balance of probabilities. Evidence produced by the Provider in support of the Response demonstrated that minimum required ratios were maintained when children were being educated and cared for during the relevant period.
15. Working directly with children records were requested and provided to the Regulatory Authority under section 215 of the Law. The Provider has acknowledged that those records were not an accurate record of the times during which educators were working directly with children. Accordingly, I am satisfied that the Provider failed to take reasonable steps to ensure working directly with children records were accurate.

**Decision**

16. In deciding if compliance action should be taken, the Authority has taken into account that the substantiated contravention is of the *Regulations*, rather than the *Law*.
17. Additionally, it is noted that the Provider has provided and implemented a plan to address the accuracy of working directly with children records, including staff meeting minutes, ongoing ratio spot checks and review of records.
18. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. In this instance, the Authority has determined not to initiate statutory action but instead to issue this Administrative Letter.
19. The Authority has determined that the steps taken (and continuing to be taken) by the Provider will meet the expectations of the Authority.
20. This letter will be recorded on your Service file and may be considered in any future applications for approvals, amendments or waivers. It may also be considered in determining any action that may be taken, should further contraventions of the *Law* or *Regulations* be found.

**Legislation**

21. 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>.

22. 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>

23. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman on (02) 6205 2012 or by email at [tanya.masterman@act.gov.au](mailto:tanya.masterman@act.gov.au).

Yours sincerely

Janine Fairburn  
Assistant Director  
Early Childhood Regulation  
ACT Education Directorate

31 August 2020