



Ms [REDACTED]
Person with Management or Control
Guardian Community Early Learning Centres Pty Ltd
RE: Guardian Childcare & Education Gungahlin

Email: compliance@guardian.edu.au

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-40769337) relating to the operation of Guardian Childcare & Education Gungahlin, SE-40005341, (the Service) operated by Guardian Community Early Learning Centres Pty Ltd, PR-00000823 (the Provider).
2. The Notification related to a circumstance where a toddler room child enrolled at the Service appeared to be missing/unaccounted for an unknown length of time on 02 September 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 02 September 2022, the Authority received NOT-40769337 from the Provider, advising that the Nominated Supervisor of the Service was walking past the toddler's room when they witnessed a child, known to be [REDACTED], playing with blocks on the mat in the Toddler's room unsupervised.
5. The team members were alerted by the Nominated Supervisor of the incident and the child's mother was notified of the incident. Refer copy of Notification at Attachment A.
6. Additional evidentiary documents submitted with NOT-40769337 were as follows:
 - a) [REDACTED] File Note.
 - b) [REDACTED] Serious Incident Report 02/09/2022.
 - c) [REDACTED] Enrolment Form.

- d) [REDACTED] File Note
- e) [REDACTED] File Note
- f) [REDACTED] File Note
- g) Supervision Checklists Toddlers and Preschool
- h) Toileting Chart 02/09/2022

- 7. The Provider as an immediate response stated that they have reviewed the supervision policy with all educators and ensured they have a thorough understanding of adequate supervision.
- 8. The Authority noted that the Provider advised that they would be undertaking an internal investigation of the incident.

Law

- 9. 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

- 10. 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.

11. 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 ██████ being unsupervised in the Toddler room, unnoticed by educators. The very nature of the incident and management of matter supports the contravention being determined.
12. 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 ██████ in this instance, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.
13. 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.
14. 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.
15. In relation to substantiated offences engaged by the Provider under sections 165 and 167 of the *Law*, the Authority requests the Provider review their processes to determine where the failing occurred to mitigate the risk of an incident of this nature occurring again.
16. 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.
17. 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

18. 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>.

19. 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>
20. Should you have any questions about this Decision please contact Authorised Officer
Vittorio Colosimo at Vittorio.colosimo@act.gov.au.

Yours Sincerely,



Vittorio Colosimo
A/g Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

28 September 2022