



Mr [REDACTED]
Person with Management and Control
Guardian Community Early Learning Centres Pty Ltd
RE: Guardian Childcare & Education Bruce

Email: [REDACTED]

Decision to issue Administrative Letter

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), recently assessed a Notification (NOT-40593613) relating to allergy management at Guardian Childcare & Education Forrest SE-40005756 (the Service), operated by Guardian Corporate early Learning Centres Pty Ltd PR-00004736 (the Provider) on 11 November 2021.
2. The notifications related to a child being provided a known allergen contrary to the medical management plans in place for the child.
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 12 November 2021, the Authority received a Notifications and attachments from the Provider advising a child, believed to be [REDACTED] (2:1 old), was given a meal of mashed potato with cheese on top despite a known allergy to dairy. Refer Notification and documents at Attachment A.
5. On 18 November 2021, the Authority sought additional information from the Provider, which was received on 19 November 2021. Refer Attachment B.

Law

6. The following provisions of the Law were relevant to the assessment:

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.

Reasons and Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that [REDACTED] was provided with food contrary to her medical management plan on 11 November 2021 and therefore, the Provider failed to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.
8. The very nature of the Notification and accompanying documentation submitted by the Provider, support offences under section 167(1) of the *Law* being substantiated. Information considered by the Authority supported that the Provider had not ensured that all educators/staff, responsible for managing [REDACTED] dietary requirements, were aware of what was in the foods that they were serving, and this has contributed to the incident on 11 November 2021.
9. However, the Authority acknowledges the Provider's review of medical management plans and communications with educators to mitigate risk of a similar incident since 11 November 2021.
10. 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 the Provider in achieving compliance and improved outcomes for children.
11. In this circumstance, noting actions already undertaken by the Provider the Authority has determined not to initiate statutory action but instead to issue this Administrative Decision.
12. Regarding the substantiated offences under section 167 of the *Law*, the Authority requires evidence demonstrating that:
 - a. All children's allergies are accounted for in reviewed and updated (where required) Medical Management plans; and
 - b. Educators and staff responsible for preparation of foods are aware of the medical conditions policy and individual children's dietary requirements; and
 - c. Educators and staff responsible for preparation of food have signed to verify they have read and understood the policy and individual children's dietary requirements.
13. Evidence should be produced, within 14 days of receipt of this letter, to Senior Investigator Sheree Lockwood at sheree.lockwood@act.gov.au.
14. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future breaches of the *Law* or *Regulations*.

Legislation

15. The *Law and Regulations* 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>
16. 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>
17. Should you have any questions about this Decision please contact Senior Investigator Sheree Lockwood on Sheree.lockwood@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

01 December 2021