

██████████
Person with Management or Control
Northside Community Services Limited
RE: Harrison Early Childhood Centre

Email: ██████████@northside.asn.au

Dear ██████████

Decision to issue Administrative Action RE: NOT-40825303

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into Notification of Incident (NOT-40825303) relating to Harrison Early Childhood Centre SE-00009790 (the Service), operated by Northside Community Service Limited PR-00005856 (the Provider).
2. Web addresses to the *Education and Care Services National Law (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

3. On 20 February 2023, the Authority received Notification of Incident (NOT-40825303) from the Provider, advising that on 20 February 2023, a child, known to be ██████████ (DOB: ██████████) with a confirmed allergy to dairy products was given lactose-free milk for morning tea by accident, resulting in an allergic reaction soon after the meal. The child broke out in a rash around the mouth and developed hive-like spots on her arm. Refer Attachment A
4. Evidentiary documents submitted with NOT-40825303 included:
 - ██████████ Action Communication Plan; and
 - Completed illness report and educator acknowledgement.

Refer Attachment B

5. Additional information was sought from the Provider which was responded to on 24 February and submitted as additional documentation to the NQA ITS. Refer correspondence at Attachment C.
6. Additional documentation uploaded to the NQAITS included:
 - Cooks Meeting Agenda and Nominated Supervisor meeting notes;
 - Daily Communication record; and
 - Additional information statements.

Refer Attachment D

7. The Authority notes that on 13 January 2023, the Authority received Notification of Incident (NOT-40811180) from the Provider, advising that on 29 November 2022, [REDACTED] had suffered an allergic reaction during sleep, resulting in the child waking up coughing, vomiting, and requiring antihistamines to be administered.
8. Additional information was sought from the Provider identifying that the child was allergic to milk and had been given the incorrect milk formula contributing to the child's illness upon waking. Refer copy of NOT-40811180 at Attachment E.

Law

9. Relevant provisions of the Law engaged by the notification are as follows:

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

10. Upon considering all information submitted by the Provider for assessment, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 167(1) of the Law.
11. The Authority is satisfied that the Provider, knowing of the child's allergies, has not taken reasonable steps to ensure that all educators were aware of and understood the specifics of [REDACTED] allergy to dairy, to ensure that educators were confident in their knowledge of which foods contained the allergen prior to provision, supporting a contravention of section 167(1) of the Law.
12. In deciding if compliance action should be taken, the Regulatory Authority has taken into account the Provider has taken appropriate steps to ensure educators were aware of expectations to mitigate risk of a similar incident.
13. The Authority determined that due to this, the Authority will not be initiating statutory compliance action in this instance. In making this determination, the Authority took into consideration that [REDACTED] did have an action and communication plan in place which was followed by the educators at the time of the reaction being identified.
14. This decision, however, is intended to bring to your attention the need to ensure that all staff are aware of and understand the importance of knowing and understanding children's dietary requirements to prevent risk of harm, and that strategies implemented to mitigate risk are also followed at all times that children are being educated and cared for at the Service.

Legislation

15. The Law applies to you as an approved provider and any approved service that the Provider operates.
16. 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>.
17. 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>

18. This Decision 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 the action to be taken, should further breaches of the Law or Regulations be found.
19. If you have any queries regarding this Decision, please contact me at janine.fairburn@act.gov.au.

Yours sincerely



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

14 March 2023