

[REDACTED]
Person with Management or Control
Kids Club Early Childhood Learning Centres Pty Ltd
RE: Kids Club Rivett Early Learning Centre

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Action RE: NOT-40574556

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification (NOT-40574556) of an incident involving a child accessing medication which had been left unattended and unsecured at Kids Club Rivett Early Learning Centre SE-40012143 (the Service), operated by Kids Club Early Childhood Learning Centres Pty Ltd PR-40001605 (the Provider) on 13 September 2021.
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 14 September 2021, the Authority received a Notification (NOT-40574556) from the Provider, advising of an incident involving an Educator leaving medication prescribed to a child unattended and unsecured on the top of lockers. A child [REDACTED] was able to access the medication and play with it, causing it to spill onto his hands. Educator statements and correspondence were provided with the Notification. Refer NOT-40574556 at Attachment A
4. On 15 September 2021, additional information was requested via email. The Provider responded to the request on 16 September 2021. Additional information submitted consisted of the following:
 - a) Copy of the medication policy; and
 - b) photograph of lockers described in notification; and
 - c) Copy of messaging to staff in relation to the incident, with evidence that staff had read and acknowledged new steps for storage and administration of medication.

Law

5. Relevant sections of the *Law* and *Regulations* 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.

Section 170 (1) of the *Regulations* - Policies and procedures to be followed

The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Reasons

6. The Authority has considered all the information submitted by the Provider and is satisfied, on the balance of probabilities, that there is sufficient evidence supplied with the notification to substantiate a contravention of 167(1) of the *Law* and engaging a breach of *Regulation 170 (1)* .
7. The very nature of the notification, and the fact that a child was able to access and handle medication not prescribed to them supports substantiation of the offence of s167 of the *Law*. In addition, the fact that the Medication policy was not followed, and medication not stored in line with expectations supports the breach of *Regulation 170*.
8. 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
9. After careful consideration of all relevant information the Authority acknowledged the following had occurred/was in action:
 - a) The Provider's actions in reviewing and changing the medication storage procedure for the centre to mitigate the risk of similar incidents; and
 - b) That the Provider has advised that, noting that the educator who has given the Medication, [REDACTED], has been considered a casual contact and is currently in isolation, a proper internal investigation will be conducted with her when she returns to the service out of isolation.
10. The Authority has determined, in this instance, not to initiate statutory compliance action regarding the substantiated contravention of sections 167(1) and of the *Law* and *Regulation 170(1)* but, rather, issue this Administrative Action to address the non-compliance.
11. This Decision is intended to bring to your attention the need to ensure that the Provider always meets its obligations under the *Law*, and to ensure every reasonable precaution is taken to protect children from harm and any hazard likely to cause injury.
12. Regarding the substantiated offences of the *Law*, the Authority requests the Provider to submit the findings and outcome of the internal investigation and any further actions taken to mitigate risk of a similar incident.
13. Evidence demonstrating the above can be forwarded to Senior Investigator, Sheree Lockwood, at sheree.lockwood@act.gov.au. Noting restrictions that are currently in place due to COVID-19, the Authority requires an update on progress within 14 days from the date of this Decision, for further review.
14. This Decision will be recorded on your Service file and may also 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.

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. 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
ACT Education Directorate

23 September 2021