

Mr [REDACTED]
Person with Management and Control
Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn
RE: Holy Family Catholic Primary School Care Out of School Hours

Email: [REDACTED]@cg.catholic.edu.au
[REDACTED]@cg.catholic.edu.au

Dear Mr [REDACTED]

Show Cause Notice – Potential Compliance Action

1. As you may be aware, the ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, have recently assessed a Notification of Incident (NOT-40690781) relating to the operation of Holy Family Catholic Primary School Care Out of School Hours, SE-00009685 (the Service), operated by Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn, PR-40001112 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the *Law*) and the *Education and Care Services National Regulations* (the *Regulations*) are provided for your convenience at the end of this notice.
3. The Authority has determined that there is sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority’s final determinations will not be made until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority.
4. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
5. The Authority is considering compliance action based on suspected contraventions of the *Law*. If substantiated, the allegations may constitute offences under sections 165(1), 167(1), 169(1), 174(2) and s175 of the *Law* (or any combination of them).
6. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
7. If any offences under the *Law* are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Potential compliance actions appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the assessment of NOT-40690781 support offences under the *Law* within the following areas:
 - a) Failure to ensure all children are adequately supervised at all times;
 - b) Failure to ensure adequate staffing arrangements in place;
 - c) Failure to protect children by taking reasonable precautions;
 - d) Failure to notify certain information to Regulatory Authority; and
 - e) Failure relating to requirement to keep records prescribed under *Regulation 158*.

Background to Notification.

9. On 12 April 2022, the Authority received a Notification of Incident (NOT-40690781) relating to an incident occurring 17 March 2022 of a circumstance where an enrolled child, known to be [REDACTED] (age 11 yrs), was missing/unaccounted for more than one hour but less than three hours. Refer Notification at Attachment A.
10. Specifically, it was advised that [REDACTED] made her way to the Service from the school after the bell rang, and that the Nominated Supervisor, [REDACTED], signed [REDACTED] into the Service at 3:16pm. After performing tasks to identify the whereabouts of children identified as not arriving at the Service as expected, the Nominated Supervisor realised, at approximately 3:30pm, that [REDACTED] was no longer at the Service. No other educators had witnessed [REDACTED] leave the Service.
11. Furthermore, it was advised that the Nominated Supervisor had attempted contact the [REDACTED] parents' multiple times, before reaching out to emergency contacts before making contact with the Child's Aunty – this taking approximately one and a half hours. [REDACTED] was formally accounted for by a parent at 5:30pm when [REDACTED] father confirmed that [REDACTED] mother had picked [REDACTED] up from the Service.
12. Considerations relating to contacting Police regarding the non-accountability of [REDACTED] were raised with the school's principal, known to be [REDACTED] [REDACTED] and that the Nominated Supervisor was informed Ms [REDACTED] that if the parents hadn't made contact by 6pm, then the police be engaged.
13. Additional information was requested from the Provider by the Authority on 13 April 2022. This request was responded to on 14 April 2022. Refer email correspondence at Attachment B.
14. Additional information included the following:
 - a) Working Directly with Children and Child Attendance records for 17 March 2022 (Attachment C);
 - b) Policy and Procedure relating to delivery and collection of children (Reg 168(2)(f)) (Attachment D);

- c) Records relating to the Nominated Supervisor – reporting expectations and induction (Attachment E); and
- d) Provider’s Incident Injury Trauma and Illness record (Attachment F).

Allegations:

Allegation One – Sections 165, 167 of the Law

It is alleged that on 17 March 2022, the Provider failed to ensure that all children being educated and cared for at the Service, were adequately supervised at all times, contravening s165(1) of the *Law*, and engaging a further contravention of 167(1) of the *Law*.

Allegation Two – Section 169 of the Law

It is alleged that on 17 March 2022, the Provider failed to ensure that the relevant number of educators educating and caring for children was no less than the number prescribed for this purpose under *Regulation 260*, in contravention of section 169(1) of the *Law*.

Allegation Three – Section 167 of the Law

It is alleged that on 17 March 2022, the Provider failed to take reasonable steps to ensure children were protected from harm and hazard likely to cause injury or illness, that inadequate procedures were in place to guide educator response to a child being missing and/or unaccounted for after having been signed in, or when parents are unable to be contacted within a reasonable timeframe to verify child’s location, in contravention of section 167(1) of the *Law*.

Allegation Four – Section 175 of Law, Regulation 177(2)

It is alleged that on 17 March 2022, the Provider failed to take reasonable steps to ensure prescribed records were able to be kept and maintained accurately, specifically in relation to inability to record accurate child attendance due to a broken iPad, in contravention of section 175 of the *Law*, and *Regulation 177(2)*.

Allegation Five – Section 174(2) of Law

It is alleged that on 17 March 2022, the Provider failed to notify the Regulatory Authority of a serious incident at the Service within 24 hours, as prescribed under *Regulation 176(2)(b)*, in contravention of section 174 of the *Law*.

Evidence Relevant to the Allegation One

15. Information and documentation obtained from the Provider in relation to the assessment of NOT-40690781 indicate the following:
 - a) The Service was educating and caring for children on 17 March 2022

- b) ██████ was an enrolled child on 17 March 2022, was signed in as attending at 3:16pm by the Nominated Supervisor and was identified as missing and unaccounted for between 3:30pm and 5:30pm.
- c) The Provider has stated within the notification of Incident (Attachment A) that no educator saw ██████ leave the Service premises.
- d) The Incident Injury Trauma Illness record, completed by the Nominated Supervisor on 7 April 2022 (Attachment F), albeit inconsistent in specific details, identifies ██████ as having left the Service unwitnessed sometime between 3:15pm and 3:40pm, and being missing from the Service. Further, that ██████ was unaccounted for until an hour after being identified as missing when the child's aunty advised she was with her mother. A further half an hour passed before formal accountability from a parent was received by the Service.

Legislation Relevant to Allegation One

Section 165(1) of the 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.

Contravention supported by Allegation One

- 16. Evidence gathered appears to support a contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(1) of said *Law*.

Evidence Relevant to the Allegation Two

- 17. Information and documentation obtained from the Provider in relation to the assessment of NOT-40690781 indicate the following:
 - a) The Provider's Working Directly with Children Records and Child attendance records (Attachment C) indicates that there were 34 children enrolled at the Service on 17 March 2022 for the after-school session, yet only three educators engaged to meet minimum regulated ratio requirements.
 - b) The Authority notes that the Nominated Supervisor was also engaged on 17 March 2022, but, as the notification of incident (Attachment A) indicates, was not working

directly with children at all times, as the Nominated Supervisor was performing other tasks such as contacting parents and trying to account for unaccounted for children during her shift.

Legislations Relevant to Allegation Two

Section 169(1) of the Law - Offence relating to staffing arrangements

The Approved Provider of an education and care service must ensure that every that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Regulation 260 – Educator to child ratio – children over preschool age – centre-based services

- (1) This regulation is in place of regulation 123(1)(d).
- (2) The educator to child ratio for children over preschool age at a centre-based service is 1 educator to 11 children.

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

- (3) 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 13 – Meaning of *working directly with children*

For the purposes 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.

Contravention supported by Allegation

18. Evidence gathered appears to support a contravention of section 169(1) of the Law.

Evidence Relevant to the Allegation Three

19. Information and documentation obtained from the Provider in relation to the assessment of NOT-40690781 indicate the following:
 - c) The Provider's Attendance and Collection Policy ([Attachment D](#)) has no identifiable provisions for how an educator at the Service is to manage a circumstance where a child is missing and/or unaccounted for when that child is expected to be in attendance.
 - d) As such, the Nominated Supervisor has sought guidance from the school's principal rather than the Provider in this instance, where advice was to not engage police

until 6pm if parents had not been in contact. At this point in time, the child had already been missing from the Service for an extended period – timeline as detailed via NOT-40690781 indicates that the Nominated Supervisor sought guidance at approximately 5pm, 1.5hours after initially identifying child unaccounted for and missing.

- e) The guidance from the Principal to wait an additional hour before contacting emergency services appears not reasonable considering no person at the Service was aware at this time of where [REDACTED] was or who she was with.
- f) The Provider stated in the body of email correspondence (Attachment B) that on 17 March 2022, there was no formal procedure in place for unaccountable children once they have been signed into the Service. That following the incident, the following is now in place:
 - i. Since the incident on the 17th of March 2022, there is one staff member greeting and signing in children covering both exit doors and the children's bags area is also visible for that staff member. The same staff member will then move to parent greeter position and call children to come as the parents arrive by walkie talkie and ensure that children are signed out correctly.
 - ii. Once the children have all arrived the Director will check to see if all children are here and follow up with any children who have not arrived by contacting the school office and then calling parents.
 - iii. A sign out procedure for parents at the sign out table saying if the iPad is not working to please sign the children out on a hard copy this is supervised and explained to by the parent greeter staff member.

Legislations Relevant to Allegation Three

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.

Contravention supported by Allegation

20. Evidence gathered appears to support a contravention of section 167(1) of the Law.

Evidence Relevant to the Allegation Four

21. Information and documentation obtained from the Provider in relation to the assessment of NOT-40690781 indicate the following:

- a) The Provider's Attendance and Collection Policy (Attachment D) states that QikKids is used to record children's attendance, and that the Nominated Supervisor or Responsible Person on Premises is responsible for ensuring attendance records are complete and are correct. No other alternatives for recording child attendance is detailed within the policy should QikKid's not be available.
- b) The Provider has stated within the notification of Incident (Attachment A) that the iPad, utilised for recording children's attendance, was broken and that this is why [REDACTED] mother had not been able to sign [REDACTED] out of the Service.
- c) The Provider stated in the body of email correspondence (Attachment B) that as a result of the incident on 17 March 2022, the following is now in place:
 - i. A sign out procedure for parents at the sign out table saying if the iPad is not working to please sign the children out on a hard copy this is supervised and explained to by the parent greeter staff member.
- d) Child Attendance records for 17 March 2022 (Attachment C) indicate that [REDACTED] [REDACTED] was in attendance until 5:47pm. The NOT-40690781 contradicts this as true and accurate.

Legislations Relevant to Allegation Four

Section 175(1) of the Law - Offence relating to requirement to keep enrolment and other documents

The Approved Provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.

Penalty: \$4000, in the case of an individual
\$20 000, in any other case.

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider

- (4) 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 –
 - (k) A child's attendance record as set out in regulation 158.
- (5) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Penalty: \$2000

Regulation 158(1) – Children's attendance record to be kept by approved provider

The approved provider of an education and care service must ensure that a record of attendance is kept for the service that -

- (a) Records the full name of each child attending the service; and
- (b) Records the date and time each child arrives and departs; and

- (c) Is signed by one of the following persons at the time that the child arrives and departs –
- i. The person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
 - ii. A nominated supervisor or an educator.

Contravention supported by Allegation

22. Evidence gathered appears to support a breach of *Regulation 177*, in contravention of section 175(1) of the *Law*.

Evidence Relevant to the Allegation Five

23. Information and documentation obtained from the Provider in relation to the assessment of NOT-40690781 indicate the following:
- a) The Provider has stated within the notification of Incident (Attachment A) that the incident involving ██████████ being missing and/or unaccounted for by the Service for up to two hours as having occurred 17 March 2022.
 - b) *Regulation 12* outlines the definition of a **serious incident** to include any circumstance where a child being educated and cared for by an education and care service appears to be missing or cannot be accounted for.
 - c) The Provider submitted the notification of incident to the Authority on 12 April 2022, being 16 days after the incident occurred.

Legislations Relevant to Allegation Five

Section 174 of Law - Offence to fail to notify certain information to Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—
- (a) any serious incident at the approved education and care service;
 - (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service;
 - or
 - (ii) that this Law has been contravened.
 - (c) information in respect of any other prescribed matters.
- Penalty: \$4 000, in the case of an individual
\$20 000, in any other case.

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—
- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates

Regulation 176(2) – Time to notify certain information to Regulatory Authority

- (2) For the purposes of section 174(4) of the Law, a notice must be provided—
- (a) in the case of a notice under section 174(2)(a)—
 - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident.
 - (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.

Contravention supported by Allegation

24. Evidence gathered appears to support a breach of *Regulation 176*, in contravention of section 174(2) of the *Law*.

Potential Compliance Action

25. The Authority reiterates that no decision has been made at this time – this letter is a step in the decision-making process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions, if any offences are substantiated. Potential compliance actions include:
- a. Non-statutory Administration Action (similar to a caution) with no further action;
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced;
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - d. Conditions on Service Approval under section 55 of the *Law*.
26. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified because of the investigation.
27. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's case management process. Alternatively (or additionally), the Authority may

place a condition on the Service Approval to address the specific non-compliance identified because of the investigation.

Right of response

28. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
29. At Attachment G to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to janine.fairburn@act.gov.au or by post to

Children's Education and Care Assurance -
Attention: Janine Fairburn
GPO Box 158, Canberra ACT 2601.

Caution

30. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
31. 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>.
32. 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>
33. Should you have any questions about this Show Cause Notice please contact Assistant Director Janine Fairburn at Janine.fairburn@act.gov.au.

Yours sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

6 May 2022