

██████████
Nominated Supervisor

RE: Holy Family Catholic Primary School Care Out of School Hours

Email: ██████████ [@cg.catholic.edu.au](mailto:██████████@cg.catholic.edu.au)

Dear Ms ██████████,

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 you, as the Nominated Supervisor, 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(2) and 167(2) and 169(3) 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; and
- c) Failure to protect children by taking reasonable precautions.

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 B.
- 10. Specifically, it was advised that [REDACTED] made her way to the Service from the school after the bell rang, and that you, in the role of Nominated Supervisor, 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, you 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 you 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]'s father confirmed that [REDACTED]'s 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], and that you were informed [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 C.
- 14. Additional information included the following:
 - a) Working Directly with Children and Child Attendance records for 17 March 2022 (Attachment D);
 - b) Policy and Procedure relating to delivery and collection of children (Reg 168(2)(f)) (Attachment E);
 - c) Records relating to the Nominated Supervisor – reporting expectations and induction (Attachment F); and
 - d) Provider's Incident Injury Trauma and Illness record (Attachment G).

Allegations:

Allegation One – Sections 165, 167 of the Law

It is alleged that on 17 March 2022, the Nominated Supervisor failed to ensure that all children being educated and cared for at the Service, were adequately supervised at all times, contravening s165(2) of the Law, and engaging a further contravention of 167(2) 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 yourself 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 B) that no educator saw ██████████ leave the Service premises.
 - d) The Incident Injury Trauma Illness record, completed by you on 7 April 2022 (Attachment G), 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.
- a) You 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 you sought guidance at approximately 5pm, 1.5hours after initially identifying child unaccounted for and missing.
 - b) 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 ██████████ was or who she was with.
 - c) The Provider stated in the body of email correspondence (Attachment C) 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.

Legislation Relevant to Allegation One

Section 165(2) of the Law – Offence to inadequately supervise children

A nominated supervisor 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

Section 167(2) of the Law - Offence relating to protection of children from harm and hazards

A nominated supervisor 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

Contravention supported by Allegation One

16. Evidence gathered appears to support a contravention of section 165(2) of the *Law*, engaging a further contravention of section 167(2) 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:
 - d) The Provider's Working Directly with Children Records and Child attendance records ([Attachment D](#)) 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.
 - e) The Authority notes that you were also engaged on 17 March 2022, but, as the notification of incident ([Attachment B](#)) indicates, you were not working directly with children at all times, as you were performing other tasks such as contacting parents and trying to account for unaccounted for children during your shift.

Legislations Relevant to Allegation Two

Section 169(3) of the Law - Offence relating to staffing arrangements

A nominated supervisor 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

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.

Fitness and Propriety as Nominated Supervisor

18. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:
 - a. be over 18 years of age;
 - b. have adequate knowledge and understanding of the provision of education and care to children; and
 - c. have the ability to effectively supervise and manage an education and care service.
19. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations. At minimum, fitness and propriety includes honesty, knowledge and ability.
20. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*.
21. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities), and also possess the ability to manage educators and any other staff, service premises and relationships with families.
22. As nominated supervisor you are also responsible for the resourcing requirements of the Service to always facilitate the provision of adequate supervision to all children, and ensure that all reasonable precautions are taken to protect children from harm and hazard likely to cause injury and illness.
23. This evidence raises a concern about your ability to manage and supervise an education and care service.
24. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

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 and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
- a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
26. Relevant legislation for enforceable undertakings and partial prohibition appears below.
27. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
28. A partial prohibition only applies to the role of nominated supervisor within the education and care sector. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

Section 179A - Enforceable undertakings

- (1) This section applies—
 - (a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this *Law*; or
 - (b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1)(a) applies, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this *Law*.
- (3) If subsection (1)(b) applies in relation to the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.

- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Section 182(3) - Grounds for issuing a prohibition notice

The Regulatory Authority may give a prohibition notice to a person to –

- (a) Prohibit the person from being a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
- (b) Impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Right of response

29. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. 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.
30. At Attachment H 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

31. 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.
32. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
33. 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>

34. Should you have any questions about this Show Cause Notice please contact Assistant Director Janine Fairburn at email 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