



Mr [REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Latham Primary School – Preschool Unit

Email: [REDACTED]@act.gov.au
[REDACTED]@act.gov.au

Dear Mr [REDACTED]

Decision to issue Administrative Action RE: NOT-40637061

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), recently conducted an assessment into a Notification of Incident (NOT-40637061) advising of an incident at Latham Primary School – Preschool Unit SE-00011204 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider) on 3 February 2022.
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 3 February 2022, the Authority received a Notification of Incident (NOT-40637061) from the Provider, advising that on 3 February 2022 an enrolled child of the Service, known to be [REDACTED] (4years), was not seen exiting the Service premises, and was subsequently found outside of his home by a neighbour. Refer NOT-40637061 at Attachment A.
4. On 8 February 2022, additional information was requested by the Authority from the Provider. Additional information was submitted, via email, to the Authority on 11 February 2022. Refer correspondence at Attachment B - Additional information submitted included:
 - Child Attendance and educator Working Directly with Children records;
 - Child safe environment policy and Supervision of students and child ratio support document;
 - Photographs of fence/gate which required maintenance, drain skirting and window ledge that create a possible climbing structure near gate;
 - Map indicting movements of [REDACTED] after he left the Service;
 - Supervision reminder email dated 10 February 2022; and
 - Email reminder to school staff about entrance gate not functioning as intended dated 8 February 2022.

Law

5. Evidence submitted via NOT-40637061 and supporting documentation engages the following sections of the *Law*:

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.

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.

Reasons

6. Having considered all documents submitted by the Provider the Authority is satisfied that the Provider has failed to comply with the *Law*.
7. The Authority is satisfied that sections 165(1) and 167(1) of the *Law* were contravened on 3 February 2022. Sections 165 and 167 of the *Law* were engaged by documentation obtained from the Provider.
8. Information gathered supports that the Provider did not ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that Service, specifically [REDACTED], in contravention of section 165(1) of the *Law*.
9. Information gathered supports that the Provider, by not ensuring adequate supervision of children or that gates were functioning as intended, has not ensured that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, in contravention of section 167(1) of the *Law*.
10. The fact that [REDACTED] was able to leave the Service premises unnoticed by educators and was located outside of his home by a neighbour, further supports the contraventions of sections 165 and 167 of the *Law*.

Decision

11. 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. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Decision.
12. In determining this outcome, the Authority took into consideration the actions undertaken by the Provider at the time of the incident, and the compliance history of the Service.

13. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
14. This Decision will be recorded on the Service’s 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 associated *Regulations* be found.
15. For your convenience, and to support future compliance, please find web addresses to relevant legislation:

The *Law* applies to you as an approved provider and any service that 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>.

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>

16. If you have any queries regarding this Decision, please contact me via email at jo.williams@act.gov.au.

Yours sincerely



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

3 March 2022