

██████████
Person with Management or Control
ACT Education Directorate
RE: Lyons Early Childhood School Preschool Unit

Email: ██████████@act.gov.au

Dear ██████████

Decision to Issue Administrative Action RE: NOT-40660012

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Complaint (NOT-40660012) relating to the operation of Lyons Early Childhood School Preschool Unit SE-00011807 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
2. The notified complaint raised allegations of inadequate supervision and failures to protect a child, known to be ██████████ (aged 4 years).
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance. Web addresses for the Law and the *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 3 March 2022, the Authority received a Notification of Complaint (NOT-40660012) alleging that on 28 February 2022 a preschool child, known to be ██████████ (aged 4 yrs), presented with COVID symptoms, was registered in the Service's sick bay and his parent was contacted to collect him. At the time of ██████████ arrival it is alleged there were no staff present supervising ██████████ whilst in sick bay. Refer NOT-40660012 and attached complaint at Attachment A.

Law

5. Provisions of the Law relevant to the investigation are:

Section 165(1) of 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.

Reasons

6. After carefully considering information submitted via the notified complaint, the Authority is satisfied that [REDACTED] was not adequately supervised in this instance, in contravention of sections 165(1) of the *Law*.
7. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured adequate supervision at all times, which resulted in a 4year old child being left in the sick bay, not in direct eyesight or supervision of educators. The very nature of the incident, admissions within the Provider's notification that [REDACTED] was not being directly supervised for a brief time, supports the contravention being determined.
8. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions.
9. In information submitted by the Provider, CECA noted that actions were undertaken to mitigate risk of a similar incident occurring. This included:
 - a) Modifications have been made with respect to the layout of the sick bay. These modifications ensure that if the school is affected by having lower than expected staff numbers in the administration area, students will be within the direct line of sight of staff.
10. This Decision is issued to remind the Provider that 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.
11. 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.

Legislation

12. 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>.
13. 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>

14. If you have any questions in relation to this Decision, please contact me by email at jo.williams@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Education and Care, Regulation and Support
ACT Education Directorate

25 March 2022