

Ms [REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Majura Primary School – Watson Preschool Unit

Email: [REDACTED] [@act.gov.au](mailto:[REDACTED]@act.gov.au)

Dear Ms [REDACTED]

Decision to Issue Administrative Action RE: NOT-40662438

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 Serious Incident (NOT-40662438) relating to Majura Primary School – Watson Preschool Unit SE-00011232 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
2. The notified incident advised that an enrolled preschool child, known as [REDACTED] (aged 4years), was unattended outdoors on 4 March 2022 and educators were notified of this by a non-staff member.
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 7 March 2022, the Authority received a Notification of Incident (NOT-40662438) from the Provider advising that, on 4 March 2022, a preschool child, known to be [REDACTED] (aged 4years), exited through the Service’s preschool gate and onto the footpath outside of the Service unnoticed by educators.
5. It was further alleged that a parent found the child and returned [REDACTED] to his mother who was still located in the carpark. [REDACTED] mother then returned the child to the educators. Refer NOT-40662438 at Attachment A.
6. On 7 March 2022, the Regulatory Authority requested additional information from the Provider. This request was responded to on 8 March 2022. Refer relevant correspondence at Attachment B.
7. Documents submitted in response to the Authority’s request included:
 - a) Supervision procedures
 - b) Photos of the Preschool gate

- c) Photo of a sign placed on gate

Law

8. Provisions of the *Law* relevant to the notification assessment 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.

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.

Reasons

9. After carefully considering all information submitted via NOT-40662438, the Authority is satisfied that the Provider has contravened sections 165(1) and 167(1) of the *Law* in this instance.
10. 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 [REDACTED] being able to exit through the gate and head onto the footpath outside the Service, unnoticed by educators. The very nature of the incident and admissions within the notification supports the contravention being determined.
11. Furthermore, the Authority is satisfied that the Provider, by not ensuring adequate supervision of a preschool child has not ensured all reasonable precautions have been taken to protect children, specifically [REDACTED] in this instance, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.
12. 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.
13. In information submitted by the Provider, it is noted that the following actions were undertaken to mitigate risk of a similar incident included:

- a) Reassessed and updated their Supervision procedure.
 - b) Providing email communication to staff members reminding them to be vigilant about ensuring the gate has been closed after entering/exiting the Service.
 - c) Replaced the loose bottom springs on the gate to help ensure it automatically closes after entering/exiting the Service.
 - d) Placing a sign on the gate reminding individuals entering/exiting to shut the gate.
14. 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.
15. 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

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 questions in relation to this Decision, please contact me by email at Jo.Williams@act.gov.au.

Yours sincerely



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

25 March 2022