ACT Government
Education

[redacted]
Person with Management or Control
ACT Education Directorate
RE: Macgregor Primary School - Preschool Unit

Email:[redacted]@act.gov.au

Dear [redacted]

Decision to Issue Administrative Action RE: NOT-40666075

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40666075) relating to the operation of Macgregor Primary School - Preschool Unit SE-00011206 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).

2. The notified incident advised of a circumstance at the Service, whereby a group of children were identified exposing themselves to each other.

3. Upon assessment of the Notification and additional information submitted by the Provider, 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 11 March 2022, the Authority received a Notification of Incident (NOT-406660075) advising that on 9 March 2022 a group of five children (all aged 4 years) stood behind bushes in the Service's outdoor environment and exposed themselves to each other. Refer NOT-40666075 at Attachment A.

5. On 11 March 2022, the Authority requested additional information be submitted by the Provider. Between 11 and 18 March 2022, the Provider submitted the following:
   a) Riskman report.
   b) Preschool playground map and review.
   c) Child and Educator recounts.
   d) Educator and Child attendance records.
   Refer relevant information at Attachment B.

Law

6. 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

7. After carefully considering information submitted via the notified incident, the Authority is satisfied that the five children involved were not being adequately supervised in this instance, in contravention of sections 165(1) of the *Law*, and engaging a contravention of section 167(1) of the *Law*.

8. 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 the five 4year old children being able to hide behind bushes and expose themselves to each other without being noticed prior, supporting the contravention being determined.

9. The Authority notes documentation supporting that there were two educators supervising twenty children in the outdoor space and one educator was engaged in the provision of first aid on the veranda, leaving only one other educator to continue supervising the other nineteen children.

10. Furthermore, additional information submitted identified that the educator in the outdoor space was aware of a child who had pulled his pants down near the bushes, assumed he was weeing, had become aware of a game being played yet when told that it was a secret game and to move away by the children, the Educator moved away as instructed allowing lower visibility/supervision which resulted in the children having sufficient time to engage in inappropriate physical contact.

11. In relation to section 167(1) of the Law, the Authority is satisfied by not ensuring adequate supervision, the Provider has not taken reasonable precautions to protect children being educated and care for by the service from harm and from any hazard likely to cause injury, which is supported by the children's disclosure of having sufficient time to engage in inappropriate physical contact consisting of licking bottoms and biting penises.

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, the Authority noted that actions advised of being undertaken to mitigate risk of a similar incident occurring. This included:
    a) A review of playground supervision arrangements; and
    b) Tidying/pruning of shrubs and bushes to reduce low visibility areas within the playground.
    c) A review of how supervision is assured with imaginary play.

14. However, the Authority holds concerns relating to how the educator supervising the children followed the children's instruction to move away rather than establish what the 'secret game' was that the children advised of – this action may have prevented the incident occurring or escalating.

15. Furthermore, the Authority has concerns that the supervision review did not identify that any amendments to current supervision was to be communicated to educators, or any additional training provided to ensure the Provider that educators are aware of and understand the expectations for supervision considering this incident.

16. Regarding the substantiated offences of s165(1) and 167(1) of the Law, the Provider is requested to submit the following as evidence to demonstrate compliance:
    a) That the supervision reviews and any amendment to usual practice prior to the incident has been communicated to educators to ensure that educators are aware of and understand supervision expectations of the Provider, and those under the *Law*.
    b) That the educator identified as moving away from the children when instructed to because they were playing a 'secret game' is afforded additional training in decision making relevant to risk and supervision of children.
    c) A review to be undertaken in relation to the process/procedure utilised when interviewing/questioning children to ensure that this method aligns with Royal Commission recommendations.

17. It is requested that this evidence is submitted <u>within fourteen days</u> of receipt of this Administrative Action to Authorised Officer Janine Fairburn at janine.fairburn@act.gov.au.

18. This Decision is also 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.

19. 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

20. 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.

21. 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

22. If you have any questions in relation to this Decision, please contact me by 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

7 April 2022