

Mr [REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Margaret Hendry School Preschool Unit

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to issue Administrative Action

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as the Children's Education and Care Assurance (CECA), recently investigated suspected offences at Margaret Hendry School Preschool Unit SE-40014271 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
2. Web addresses to the *Education and Care Services National Law Act (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 26 June 2023, the Authority received a notification of complaint (NOT-40872108) from the Provider alleging a child, [REDACTED] continued to experience trauma from being made to lay on his back during toileting in 2020 and a complaint (2020) was not addressed.
4. On 27 June 2024, the Authority sent the Provider a Show Cause Notice (the Notice) for the purpose of affording an opportunity to respond to the allegations and to ensure procedural fairness. Refer copy of the Notice at Attachment A (Notice only).
5. The Notice outlined the grounds for issue, and the evidence relied on by the Authority advising of the allegations. In addition, the Notice outlined the compliance actions being considered by the Authority should the allegation be substantiated.

Allegations

Allegation One

6. It is alleged that during 2020, the Provider failed to ensure that every reasonable precaution was taken to protect children being educated and care for by the Service from harm and any form of hazard likely to cause injury, in that [REDACTED] support needs were not adequately formalized into a plan in consultation with family, and communicated to staff, contravening s167(1) of the *Law*.

Allegation Two

7. It is alleged that during August 2020, the Provider failed to notify the Regulatory Authority of a complaint that the *Law* had been contravened, in that the Provider was aware of a complaint that a child, believed to [REDACTED], had been held down and inappropriately toileted, contravening s174(2)(b)(ii) of the *Law*.

Allegation Three

8. It is alleged that by 12 June 2023, the Provider failed to notify the Regulatory Authority of a complaint that the *Law* had been contravened, in that the Provider was in receipt of a further complaint that child, [REDACTED] had been held down and restrained by staff during toileting, contravening s174(2)(b)(ii) of the *Law*.

Allegation Four

9. It is alleged that by 25 February 2020, the Provider failed to notify the Regulatory Authority of serious incident, in that a child, believed to be [REDACTED], was missing and unaccounted for, contravening s174(2)(b)(i) of the *Law*.

Allegation Five

10. It is alleged that between 3 February 2020 and 30 June 2020, the Provider failed to take reasonable steps to ensure prescribed records were accurate, in that, Incident, injury, trauma, illness record was not completed for a child, [REDACTED] in compliance with regulation 87, giving rise to a contravention of regulation 177(2).
11. On 5 August 2024, the Authority received the Provider's extensive response to the Notice. Refer Attachment B (Response only).

Law

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.

174 Offence to fail to notify certain information to Regulatory Authority

(2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened;
- (c) information in respect of any other prescribed matters.

Penalty: \$4500, in the case of an individual.

\$22 900, in any other case.

176 Time to notify certain information to Regulatory Authority

(1) For the purposes of section 174(3) of the Law, a notice must be provided within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

(2) For the purposes of section 174(4) of the Law, a notice must be provided—

- (a) in the case of a notice under section 174(2)(a)—
 - (i) in the case of the death of a child, as soon as practicable but within 24 hours of the death, or the time that the person becomes aware of the death; and
 - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware the incident;
- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;
- (ba) in the case of a notice under regulation 175(2)(ca), within 24 hours of the commencement of the attendance of the child or children at the education and care service;
- (c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

Regulation 87 - Incident, injury, trauma and illness record

- (1) The approved provider of an education and care service must ensure that an incident, injury, trauma and illness record is kept in accordance with this regulation.
- (2) -
- (3) The incident, injury, trauma and illness record must include—
 - (a) details of any incident in relation to a child or injury received by a child or trauma to which a child has been subjected while being educated and cared for by the education and care service or the family day care educator, including—
 - (i) the name and age of the child; and
 - (ii) the circumstances leading to the incident, injury or trauma; and
 - (iii) the time and date the incident occurred, the injury was received or the child was subjected to the trauma;

Regulation 177 Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider—
 - (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151;
 - (k) a children’s attendance record as set out in regulation 158;
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in sub-regulation (1) are accurate.

Penalty: \$2200.

Obligations upon Regulatory Authority

12. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely -
‘To ensure the safety, health and wellbeing of children attending education and care services; ...’
13. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
 - (a) that the rights and best interests of the child are paramount; ...
 - (f) that best practice is expected in the provision of education and care services.
14. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) to monitor and enforce compliance with this *Law*;
 - (d) to receive and investigate complaints arising under this *Law*.

15. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
16. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

Decision

17. After careful consideration of the Provider's response and all available evidence, the Authority is not satisfied that, on the balance of probabilities, there is sufficient weight of evidence to substantiate contraventions of 167(1) and 174 of the *Law* in this instance.
18. Regarding Allegation Five, the Authority is satisfied that that the Provider failed to ensure that prescribed records on 3 February 2020 and 30 June 2020, were accurately maintained contravening *Regulation 177(2)*.
19. 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.
20. Considering the evidence, objectives, and guiding principles of the *Law*, historical nature of the non-compliance and recent strategies from the Provider to ensure staff are aware of obligations of accurately maintaining records, the Authority has decided to issue this administrative letter rather than take statutory compliance action. No further response is required.
21. This outcome will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future breaches of the *Law* or *Regulations*.

Legislation

22. The Education and Care Services National Law applies to you as a provider and any service you operate.
23. The National 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>.

24. Should you have any questions about this Decision please contact Senior Investigator [Brian Cropper](mailto:brian.cropper@act.gov.au) at brian.cropper@act.gov.au.

Yours Sincerely,



Nicole Withers

Assistant Director- Regulatory Operations

Education and Care, Regulation and Support

13 August 2024