

Ms [REDACTED]
Person with Management or Control
ACT Education Directorate
Monash Primary School – Preschool Unit

Email: [REDACTED]
[REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE NOT-40541024

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40541024) relating to the operation of Monash Primary School – Preschool Unit SE-00011212 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider).
2. The Notification related to a circumstance where a child being educated and cared for by the Service was missing/unaccounted for on 24 May 2021.
3. 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

4. On 24 May 2021, the Authority received NOT-40541024 (the Notification) from the Provider advising that, on 24 May 2021 a child, known to be [REDACTED] (aged 4 years), was left behind in the Service during an unplanned fire evacuation. Refer copy of the Notification at [Attachment A](#).
5. On 26 May 2021, the Authority requested additional information from the Provider to assist in the assessment of the Notification. Additional information was submitted 28 May 2021 and included documents and information relating to the following:
 - a) Policies, procedures, and risk assessments in effect at the Service regarding emergency evacuations;
 - b) Strategies/actions being implemented to mitigate risk of a similar incident occurring; and
 - c) Evidence demonstrating how strategies and actions were being communicated, as well as a review of procedures and practices regarding emergency evacuations.Refer email correspondence at [Attachment B](#).
6. The Authority assessed the information provided in the Notification. The information satisfied the Authority that an offence had been committed against the Law at the Service.

Law

7. The following provisions of the *Law* are relevant to the facts as outlined in the Notification:

Section 165 of the *Law* - Offence to inadequately supervise children

- (1) 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 of the *Law* - Offence relating to protection of children from harm and hazard

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Decision

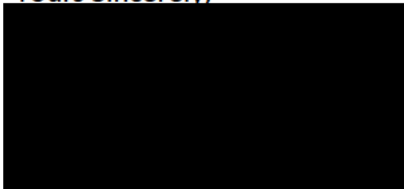
8. The Authority has considered all the information supplied by the Provider and is satisfied that, on 24 May 2021, the lack of educator knowledge to follow process and ensure that all areas of the preschool were checked when evacuating children constituted a failure to take reasonable precautions to protect children from harm and from hazards likely to cause injury, in contravention of section 167(1) of the *Law*.
9. In addition, the very nature of the Notification engages a contravention of section 165 of the *Law*, as whilst the evacuation was occurring, [REDACTED] was unaccounted for, and if she had been accounted for and supervised adequately, would not have been left behind during an emergency evacuation.
10. 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 this Administrative decision.
11. In deciding if a compliance action should be taken, the Authority considered the following considerations:
 - a) That because of the incident, the Provider has advised of strategies that they have put in place to mitigate future risk of a similar incident occurring during an evacuation or emergency situation.
 - b) If the Provider ensures that policies and procedures are followed appropriately at the Service, then risk of potential harm or hazard to children will be mitigated through better planning of supervision needs within the different area and rooms during an evacuation of the Service.
 - c) The compliance history of the Service, noting no contraventions of *Law* for any previous similar matters.
12. The Authority determined that strategies implemented to address the inadequacies of supervision and accountability of children during an evacuation has met the expectations of

the Authority. Due to this, the Authority will not be initiating statutory compliance action in this instance. However, the contravention has been recorded on the Service file and may be considered in the instance of any future similar incidents.

Legislation

13. The *Law* applies to you as a provider and any service 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>.
14. 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>
15. Should you have any questions about this Decision please contact Authorised Officer Tanya Masterman at Tanya.Masterman@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support
ACT Education Directorate

16 June 2021

CC'd: 