

Ms [REDACTED]
Person with Management or Control
Miles Franklin Primary School P & C Association Inc
RE: Miles Franklin Out of School Hours Care

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a notification of a serious incident at Miles Franklin Out of School Hours Care SE-00009693 (the Service), operated by Miles Franklin Primary School P & C Association Inc PR-00005851 (the Provider).
2. This letter is being directed to you in your position as Person with Management or Control of the Provider, rather than in your personal capacity.
3. Web addresses to the *Education and Care Services National Law (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 7 February 2022, the Authority received a notification (NOT-40640598) of a serious incident involving [REDACTED] (aged 5 years 9 months) falling from a metal handrail, and landing headfirst on concrete, sustaining swelling and abrasion.
5. It was advised in the notification that first aid was administered, and [REDACTED] mother was contacted, after which medical attention was sought. Refer Attachment A for documents included in the notification.
6. On 9 February 2022, the Authority requested additional information, which was submitted on 11 February 2022. Refer Attachment B for additional information submitted, which included:
 - a) Supervision Plan with positioning of educators at the time of the incident;
 - b) Risk Assessment;
 - c) Photograph of railing; and
 - d) Week 2 Team Leader Meeting Minutes and sign-in.

Law

7. The following provisions of the *Law* are relevant to the assessment of the notification:

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.

Reasons and Decision

8. The Authority has considered all available information supplied by the Provider, including the age of the child injured, management of the injury, staffing levels at the time of the incident, positioning of educators, existing risk assessment, and risk of serious injury associated with the positioning of the handrail over unprotected concrete.
9. It is noted that the handrail was included in the Risk Assessment (which appears to be due for review in April 2022, having last been reviewed in April 2021). It referred to the following mitigation strategies:
- *Ensure staff follow supervision plan, and children follow procedure of both feet on the ground and no playing or swinging on the railing.*
 - *Staff to immediately speak with children who are inappropriately using the handrail.*
10. It appears from information provided that the existing risk mitigation strategies were not being implemented at the time of the incident, given that the supervision plan was not being followed, and it was not being ensured that children had both feet on the ground and were not playing/swinging on the railing. It is not clear if anyone spoke to [REDACTED] about use of the rail before the incident.
11. From the information provided, it appears that the Provider has not considered the need to ensure adequate supervision, direction and risk mitigation for the younger children being educated and cared for, particularly those transitioning from a preschool environment.
12. The Authority is satisfied on the balance of probabilities that the failure to ensure the existing risk mitigation strategies were followed, and failure to consider active supervision and risk mitigation requirements for younger children, constituted a failure to ensure reasonable precautions were taken to protect children from harm and from any hazard likely to cause injury, in contravention of section 167(1) of the *Law*.
13. 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 the Provider in achieving compliance and improved outcomes for children.
14. In this circumstance, the Authority has considered the Service's compliance history, the level of risk to younger children, and steps already undertaken by the Provider in this matter. The Authority determined, in this instance, not to initiate statutory action but instead to issue this Administrative Decision.

15. Regarding the substantiated offences of section 167(1) of the *Law*, the Authority is satisfied that actions already undertaken by the Provider, and, as long as supervision expectations are ensured and followed by educators as outlined in the risk assessment, will mitigate risk of a similar incident occurring.
16. This Decision is issued to remind the Provider that at all times, staffing and supervision levels need to meet the emotional, developmental and physiological needs of all children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children, especially younger cohorts, from harm and hazard likely to cause injury.
17. This decision 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 similar breaches of the *Law* or *Regulations*.

Legislation

18. The *Law* and *Regulations* 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>
19. 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>
20. Should you have any questions about this Decision please contact me at janine.fairburn@act.gov.au.

Yours Sincerely,



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

01 March 2022