

Mr [REDACTED]  
Person with Management or Control  
Think Childcare Services Pty Ltd  
RE: Nido Early School Franklin

Email: [REDACTED]

Dear Mr [REDACTED]

**Decision to issue Administrative Action RE: NOT-40666705**

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance (CECA), recently assessed a Notification of Incident (NOT-40666705) relating to Nido Early School Franklin SE-40015950 (the Service), operated by Think Childcare Services Pty Ltd PR-40000153 (the Provider) on 8 March 2022.
2. The notification related to information received by the Provider from an educator alleging that four children had been left unattended/unsupervised.
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 11 March 2022, the Authority received a Notification of Incident (NOT-40666705) advising that on 10 March 2022 the Nominated Supervisor was advised that four children were left unattended/unsupervised by an educator on 8 March 2022. Refer notification at Attachment A.
5. On 15 March 2022, the Authority sought additional information from the Provider, which was received on 22 March 2022. Refer relevant correspondence and submitted information at Attachment B.
6. On 1 April 2022, the Provider submitted additional information, advising that the Provider's internal investigation into the allegations had substantiated that children had been left unsupervised, with the educator identified as educating and caring at the time being terminated from their employment. Refer relevant correspondence at Attachment C.

**Law**

7. The following provisions of the Law were relevant to the assessment:

**Section 165(1) of the *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 and Decision**

8. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that on 8 March 2022, inadequate supervision resulted in four children from the upstairs nursery room being unattended. Inability to ensure adequate supervision at all times engages a failure to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.
9. The very nature of the Notification and additional information submitted by the Provider, support offences under sections 165(1) and 167(1) of the *Law* being substantiated on 8 March 2022.
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 the Provider in achieving compliance and improved outcomes for children.
11. When deciding what appropriate action to take, the Regulatory Authority took the following matters into consideration:
  - a. The Provider’s internal investigation of the matter, and actions relating to findings;
  - b. The age, potential risks and timeframe associated with the children being unsupervised;
  - c. The role of the educator and their actions/conduct on 8 March 2022 in relation to the offences; and
  - d. The Providers advice that communications and strategies have been undertaken in relation to supervision with all educators to mitigate risk of a similar incident occurring.
12. In this circumstance, noting actions already undertaken by the Provider, the Authority has determined not to initiate statutory action but instead to issue this Administrative Decision.

13. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental and physiological needs of children and educators alike. 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.
14. 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 breaches of the *Law* or *Regulations*.

### **Legislation**

15. 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>
16. 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>
17. Should you have any questions about this Decision please contact me at email [janine.fairburn@act.gov.au](mailto: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

8 April 2022