

Mr [REDACTED]
Person with Management or Control
Affinity Education Group Limited
RE: Papilio Early Learning Barton

Email: [REDACTED]
[REDACTED]

Dear Mr [REDACTED]

Decision to Issue Administrative Action RE: NOT-40653129

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40653129) relating to the operation of Papilio Early Learning Barton SE-00009847 (the Service) operated by Affinity Education Group Limited PR-40001112 (the Provider).
2. NOT-40653129 advised of a child being found by an educator in the outdoor environment on 23 February 2022.
3. 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 24 February 2022, the Authority received a Notification of Incident (NOT-40653129), from the Provider, advising that on 23 February 2022, a toddler child, known to be [REDACTED] (aged 2yrs), was located outside at the front gate by an educator unsupervised. Refer NOT-40653129 and attached Incident report at Attachment A.
5. On 25 February 2022, the Authority requested additional information from the Provider for the purpose of assessing the matter. Additional information was submitted by the Provider on 2 and 3 March 2022. Refer relevant correspondence at Attachment B.
6. Documents and information submitted by the Provider on 2 and 3 March 2022 included:
 - a) Child attendance and Educator working directly with children (WDWC) records for 23/02/2022;
 - b) Supervision procedures and actions, relevant to supervision, undertaken by the Provider in response to the incident of 23/02/2022;
 - c) internal investigation documents relating to NOT-40653129 inclusive of statements, records of conversations, relevant emails, finding or outcomes– Refer Attachment C.

Law

7. Provisions of the *Law* relevant to the assessment of NOT-40653129 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

8. After carefully considering all information submitted by the Provider, the Authority finds contraventions of sections 165(1) and 167(1) of the *Law* against the Provider have been substantiated in this instance.
9. 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 [REDACTED] being located unsupervised near the gate, after having left the Toddler room unnoticed by educators. The very nature of the incident, admissions within the Provider's incident report and management of matter supports the contraventions of *Law* being determined.
10. Furthermore, the Authority is satisfied that the Provider, by not ensuring adequate supervision of a toddler, has not ensured all reasonable precautions have been taken to protect children, specifically [REDACTED] in this instance, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.
11. 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.
12. In relation to substantiated offences engaged by the Provider under sections 165 and 167 of the *Law*, the Authority notes that the Provider was recently issued an Administrative Decision on 10 March 2022, relating to similar substantiated offences resulting from findings of an investigation conducted by the Authority regarding a toddler child accessing a carpark unnoticed by educators

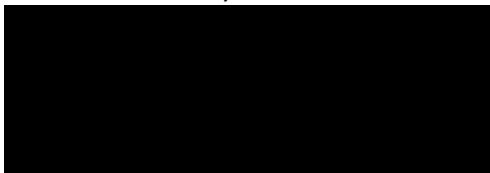
on 22 November 2021. The Authority further notes that additional information has been requested from the Provider in response to this matter to demonstrate compliance with the *Law* and is expected to be submitted by 25 March 2022.

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 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.
14. Additionally, this Decision is issued to advise the Provider that should further non-compliance with the *Law* of a similar nature be identified, may result in stronger statutory action, so as to ensure that children are protected whilst enrolled at the Service.
15. 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

16. 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>.
17. 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>
18. If you have any questions in relation to this Decision, please contact me by email 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

16 March 2022