

██████████
Person with Management or Control
ACT Education Directorate
RE: Palmerston District Primary School – Preschool Unit

Email: ██████████ [@act.gov.au](mailto:██████████@act.gov.au)
██████████ [@act.gov.au](mailto:██████████@act.gov.au)

Dear Ms ██████████

Decision to Issue Administrative Action

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated a complaint relating to the operation of Palmerstone District Primary School – Preschool Unit SE-00011217 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
2. The complaint related to interactions between an educator and children on 8, 9 and 10 February 2021.
3. Web addresses for 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 letter.

Background

4. On 15 February 2021, the Authority was notified by phone of a complaint regarding conduct of an educator towards children, with formal notification via the NQAITS Portal on 17 February 2021. Due to the risk of harm to children caused by inappropriate discipline or interactions, the Authority commenced an investigation into suspected offences under sections 166 and 167 of the *Law*.
5. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including documentation and witness statements obtained under section 215 of the *Law*. Information obtained indicated an additional potential offence relating to a particular child ██████████ and support strategies in place. The Authority determined to expand the existing investigation to include an additional suspected offence under section 167 of the *Law*. Further documentation was obtained in relation to that offence.
6. The evidence obtained suggested three allegations that supported offences under the *Law* as follows:

- a. The first allegation was that, between 8 and 10 February 2021 (inclusive), the Provider failed to take reasonable precautions to protect children being educated and cared for by the Service from harm or hazard likely to cause injury by failing to ensure that interactions between educator [REDACTED] and multiple children met the requirements of Regulation 155, in contravention of section 167(1) of the *Law*;
 - b. The second allegation was that, between 1 February 2021 and 1 April 2021 (inclusive), the Provider failed to take reasonable precautions to protect children from harm and hazards in that insufficient strategies were implemented in relation to support of [REDACTED] [REDACTED] (enrolled in Class PSP), resulting in multiple circumstances posing a risk to the health, safety and wellbeing of children, particularly [REDACTED] (enrolled in Class PSP), in contravention of section 167(1) of the *Law*;
 - c. The third allegation was that, in contravention of section 174 of the *Law*, the Provider has failed to notify prescribed matters to the Regulatory Authority, being circumstances arising at the Service between 1 February 2021 and 17 March 2021 (inclusive), that posed a risk to the health, safety and wellbeing of a child of children attending the Service.
7. On 11 August 2021, the Authority issued the Provider with a Show Cause Notice (SCN). Refer Attachment A for the SCN. Due to size, attachments to the SCN have not been included with this decision.
 8. Due to the significant additional load placed on Providers due to COVID-19 lockdown restrictions commencing on 12 August 2021, time to respond was extended to 15 September 2021.
 9. On 15 September 2021, the Authority received a response to the SCN from the Provider (Initial SCN Response). Refer Attachment B. Due to size, attachments to the Initial SCN Response have not been included with this decision.
 10. It was noted by the Authority that documentation had been referred to in the Initial SCN Response, but not included, specifically the reportable conduct investigation. After being invited to submit any additional documentation, the Provider forwarded the final acknowledgment from the ACT Ombudsman and advised on 17 September 2021 that it was not the custodian of the investigation documentation. Refer Attachment C for email chain.
 11. In the interests of procedural fairness and to ensure all potentially relevant evidence was considered, the Authority exercised powers under section 863B of the *Children and Young People Act 2008* to obtain the reportable conduct information sent to the ACT Ombudsman by the Provider's People and Performance Team on 28 April 2021. That information was received from the ACT Ombudsman on 14 October 2021. Refer Attachment D for the Provider's Reportable Conduct Investigation.

12. During the Authority's case management deliberations, it was noted that, although the correctly labelled document had been included with the SCN, the SCN contained a typographical error in relation to a document relevant to Allegation Three, referring to "Attachment G", rather than "Attachment I". By email dated 25 October 2021, the Provider was advised of the error and provided an additional week to respond to Allegation Three, which had not been expressly responded to in the Initial SCN Response. Refer Attachment E for email.
13. On 1 November 2021, the Provider submitted a supplementary response to Allegation Three (Supplementary SCN Response). Refer Attachment F for Supplementary SCN Response.

Reasons

Allegations One and Two – Protection from Harm and Hazards

14. The Authority has carefully considered all available evidence, including the Provider's Initial SCN Response and the Reportable Conduct Investigation.
 15. With regards to Allegation One, it was noted that, as soon as the Provider became aware of the allegations, appropriate steps were taken via a reportable conduct investigation, which did not substantiate the allegations. It was noted that there was limited corroboration of the allegations made and that ██████████ had been receptive to feedback, including from the Support at Preschool team. It has been determined by the Authority that reasonable precautions were taken by the Provider and therefore no offence under section 167(1) of the Law is substantiated.
 16. With regards to Allegation Two, the Authority noted the Provider's submission that the Deputy Principal at the Service worked to develop a Positive Behaviour Response Plan for ██████████ and services of Support at Preschool were engaged. The Provider also referred to discussions with parents and the need to be reflective and responsive to the situation, making adjustments until the correct interventions were in place. Although evidence to support those submissions was not included with the Provider's Initial SCN Response, the Nominated Supervisor's response was very comprehensive, containing all relevant documentation, which the Authority considered in this regard. The Authority has determined that actions taken by the Provider met a threshold level of compliance and that there is insufficient evidence to substantiate any offence under section 167(1) of the Law.
- #### Allegation Three – Failure to Notify

17. With regards to Allegation Three, the Authority has carefully considered all available evidence, including the Provider's Supplementary SCN Response concerning Allegation Three. The Provider has acknowledged that the incidents were not notified to the Regulatory Authority as required. The Authority notes that this was due to the Service not disclosing them to the Provider, however this is evidence of inadequacy of internal systems, rather

than being relevant to substantiation of an offence.

18. It has been determined by the Authority that an offence under section 174 of the *Law* is substantiated on the balance of probabilities.

Decision

19. 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.
20. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance, for example fines or compliance notices through to suspension of your service approval and/or prosecution. Many of these options allow the Authority to publish details of your non-compliance.
21. In relation to Allegation Three, the Authority has considered the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the following steps taken by the Provider in rectification:
- a. Discussions were held with the teacher responsible for providing relevant information did not record incidents on Sentral or on an Incident, Injury and Accident form. It is noted that teacher is no longer working at the Service;
 - b. A change in Educational Leader has taken place and that person has sought support from School Operations;
 - c. The Provider will be working with the Nominated Supervisor and Educational Leader to ensure effective leadership and compliance at the Service;
 - d. The Provider has spoken with the Nominated Supervisor regarding reporting obligations, including time frames and the need to ensure accurate recording within Sentral.
22. The Authority is satisfied that the steps being taken by the Provider as outlined in the Supplementary SCN Response will satisfy the Authority's expectations and no further action or documentation is required by the Authority.
23. Although no offence under section 167(1) of the *Law* was substantiated, the Authority notes that it took two months to reach the point of an appropriate behaviour support plan being implemented, and evidence gathered throughout the investigation and resultant show cause process gave cause for concern about the quality of practice within the service (as distinct from compliance).
24. The Authority takes the opportunity to encourage reflection on appropriate contemporary practices within the Service. Attention is particularly drawn to supporting individual children's needs so as to foster a sense of belonging and self-identity, and

guiding children's behaviour in a way that encourages agency, dignity, and development of emotional regulation skills, reflective of the requirements of Regulation 155. Education and care should be provided to children in a way that:

- a. encourages the children to express themselves and their opinions; and
 - b. allows the children to undertake experiences that develop self-reliance and self-esteem; and
 - c. maintains at all times the dignity and rights of each child; and
 - d. gives each child positive guidance and encouragement toward acceptable behaviour; and
 - e. has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.
25. The substantiated breach of Section 174 has been recorded on your file and may be considered by the Authority when considering any further applications for service approvals in the ACT or in the event of further similar contraventions.

Legislation

26. 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>.
27. 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>
28. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman on (02) 6205 2012 or by email at tanya.masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate

12 November 2021