

Mr [REDACTED]
Person with Management or Control
Canberra Rudolf Steiner School Association Incorporated
RE: Orana After School Care

Email: [REDACTED]

Dear Mr [REDACTED]

Administrative Decision

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently carried out enquiries relating to defined roles at Orana After School Care SE-00009696 (the Service) operated by Canberra Rudolf Steiner School Association Incorporated PR-00005817 (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to 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. Between 3 March 2021 and 5 March 2021, the Authority corresponded with the Service's OSHC Educator/21C, [REDACTED] advising that she was unable to access the portal to submit notifications as she is not approved to use it by the Provider. Refer emails at [Attachment A](#).
5. On 6 March 2021 an Authorised Officer of the Authority attempted to get in contact via telephone with the Provider to ensure that Ms [REDACTED] was delegated to notify reportable matters via the ACECQA IT Portal.
6. The telephone number for the Provider was identified as that of the Orana School, and the school's receptionist confirmed that the two Persons with Management or Control (PMC), known to be Ms [REDACTED] and Ms [REDACTED], as nominated via the ACECQA IT portal, no longer were engaged by the Provider.
7. The Authorised Officer then attempted to contact the Nominated Supervisor for the Service via the service number listed on the ACECQA IT Portal, known to be Ms [REDACTED]. Ms [REDACTED] answered and advised the Authorised Officer that the mobile number was her personal mobile number, and that she ceased employment at the Service on 19 February 2021.
8. Due to information received by the Authorised Officer from the school receptionist and Ms [REDACTED] suspicions were raised that contraventions of the Law had been committed by the Provider.

9. On 9 March 2021, the Provider was advised via email that the Authority would be attending the Service to clarify roles and make enquiries. Refer email correspondence at Attachment B.
10. On 10 March 2021, a meeting was conducted at the Service, attended by Authorised Officers of the Authority, Ms [REDACTED], and yourself. It was confirmed at this meeting that multiple sections of the Law had not been complied with, with direction given via email to rectify the non-compliance issued after the meeting. Refer email correspondence at Attachment C.
11. On 11 March 2021, the Provider responded to the directions given via email of 10 March 2021 being details of current Board Directors and notifications of the following via the ACECQA IT Portal:
 - a) Notification to add Nominated Supervisor;
 - b) Appointment/removal of PMC;
 - c) Change of Provider contact details;
 - d) Change of approved service contact details; and
 - e) Ceasing/removing/withdrawing of Nominated Supervisor.

Law

12. Provisions of the *Law* and *Regulation* engaged by this matter include:

Section 56 of the Law – Notice of addition of nominated supervisor

- (1) The approved provider of an education and care service must give written notice to the Regulatory Authority in accordance with this section if the approved provider wishes to add a new nominated supervisor of the education and care service.
- (2) The notice must—
 - a) nominate one or more individuals to be nominated supervisors of the service and, unless the individual nominated is the approved provider, include from each nominated individual the written consent to the nomination; and
 - b) include the prescribed information; and
 - c) be given—
 - i. at least 7 days before the individual is to commence work as a nominated supervisor; or
 - ii. if that period of notice is not possible in the circumstances, as soon as practicable but not more than 14 days after the individual commences work as a nominated supervisor.

Section 173(1)(b) of the Law - Offence to fail to notify certain circumstances to Regulatory Authority

An approved provider must notify the Regulatory Authority of the following in relation to the approved provider, or each approved education and care service operated by the approved provider— any appointment or removal of a person with management or control of an education and care service operated by the approved provider.

Section 173(2)(b) of the Law - Offence to fail to notify certain circumstances to Regulatory Authority

An approved provider must notify the Regulatory Authority of the following in relation to an approved education and care service operated by the approved provider— if a nominated supervisor of an approved education and care service—

- (i) ceases to be employed or engaged by the service; or
- (ii) is removed from the role of nominated supervisor; or
- (iii) withdraws consent to the nomination.

Section 173 of the Law - Offence to fail to notify certain circumstances to Regulatory Authority

(3) A notice under subsection (1) or (2) must—

- a) be in writing; and
- b) include any prescribed information.

(4) A notice under subsection (1) must be provided within the relevant prescribed time to the Regulatory Authority that granted the provider approval to which the notice relates.

(5) A notice under subsection (2) must be provided within the relevant prescribed time to the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 174 Time to notify certain circumstances to Regulatory Authority

(1) For the purposes of section 173(4) of the Law, a notice must be provided within 14 days of the relevant event or within 14 days of the approved provider becoming aware of the relevant event.

(2) For the purposes of section 173(5) of the Law, a notice must be provided—

- (aa) in the case of a notice under section 173(2)(e), at least 14 days before the change in the location of the principal office takes place; or
- (a) in the case of a notice under section 173(2)(f), within the period referred to in section 59 of the Law;
- (b) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant event.

Reasons

13. The Authority is satisfied, based on consideration of all facts as outlined, that the Provider has failed to comply with sections 56 and 173 of the *Law*.
14. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.
15. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Action rather than impose any statutory compliance actions.
16. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) The Provider addressed all identified non-compliances promptly once advised by the Authority;
 - b) The Provider's and the Service's clear compliance record.

17. Regarding the substantiated offences under the *Law*, the Authority is satisfied that, so long as the Provider continues complying with its obligations under the *Law*, no further action is required.
18. This Decision will be recorded on your Service 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 *Regulations* be found.

Legislation

19. 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>.
20. 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>
21. If you have any questions in relation to this letter, please contact me at Janine.fairburn@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

15 April 2021