

Law

7. The facts as outlined in the Notification support contravention of the following:

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.

Section 169(1) of the *Law* - Offence relating to staffing arrangements

An Approved Provider of an education and care service must ensure that, whenever children are being educated and cared for by a service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Decision

8. The Authority has considered all the information supplied by the Provider, and is satisfied that there was inadequate staffing arrangements between 8am and 9am on 14 October 2020 at the Service, in contravention of section 169(1) of the *Law*, and engaging contraventions of 167(1) of the *Law*.
9. In addition, the Authority is satisfied that, on balance of probabilities, adequate supervision could not have been ensured in the Nursery, Toddler and Preschool spaces between 8am and 9am with only one educator present in each room, in contravention of section 165(1) of the *Law*, and engaging a contravention of section 167(1) of the *Law*.
10. The Authority notes that there were three unforeseen absences on the morning which attributed to the contraventions. However, it is identified via records that between 8am and 9am there should have been a minimum of six educators working directly with children and that there appeared to be no proactive contingencies in place by the Provider to address how such a circumstance would be managed by the Service.
11. 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 you to achieve compliance and improve outcomes for children. In this circumstance, the Authority has determined not to initiate statutory action but instead to issue you this Administrative Letter.

12. This Decision is issued to remind the Provider that at all times, staffing and supervision levels need to meet not just minimum requirements for compliance, but also the emotional, developmental and physiological needs of children. 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.
13. Furthermore, the Provider should have appropriate contingencies in place to be maintaining compliance, and support the needs of children and educators, in the event of unforeseen absences of staff.
14. This Decision has been recorded on the Service file and may be considered in the instance of any future similar non-compliance with the *Law* and *Regulations*.

Legislation

15. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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 National Law is made up of an Act and Regulations which 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 janine.fairburn@act.gov.au.

Yours Sincerely,



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

23 October 2020