



██████████
Person with Management or Control
ACT Education Directorate
Forrest Primary School – Deakin Preschool Unit

Email: ██████████@act.gov.au
██████████@act.gov.au

Dear ██████████

Decision to issue Administrative Action

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently commenced an investigation into a complaint alleging that the *Education and Care Services National Law (ACT)* (the Law) was contravened at Forrest Primary School – Deakin Preschool Unit SE-00011181 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider).
2. The complaint related to inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazards likely to cause injury, on 12 and 13 May 2021.
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. On 17 May 2021, the Authority received a complaint in relation to the operation of the Service. Allegations raised in the complaint related to an unwitnessed injury on 12 May 2021 and supervision and toileting arrangements during an excursion on 13 May 2021.
5. The complaint, which was sent to the Nominated Supervisor of the Service ██████████ via emails on Saturday 15 May 2021 (deemed to be received 17 May 2021), was not notified at any time to the Regulatory Authority. Refer copy of the email from ██████████ to ██████████ dated 15 May 2021 at Attachment A.
6. Due to the risk to children when inadequately supervised, the Authority determined to investigate suspected offences of inadequate supervision and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.
7. The specific allegations considered by the Authority were:
 - a. Allegation One: On Wednesday 12 May 2021, whilst being educated and cared for at the Service, ██████████ (aged 4) sustained an unwitnessed head injury by being struck in the temple by a nest swing, first aid may not have been administered, and the parent was not contacted promptly, in contravention of section 165(1) of the Law, engaging an additional contravention of section 167(1);

- b. Allegation Two: On 13 May 2021, during an excursion to Canberra Museum and Gallery, the Provider failed to ensure children were adequately supervised at all times in that two children broke loose from an LSA [REDACTED] and ran ahead, in contravention of section 165(1) of the *Law*, engaging an additional contravention of section 167(1);
- c. Allegation Three: On 13 May 2021, during an excursion to Canberra Museum and Gallery, the Provider failed to ensure appropriate toileting procedures in that an accompanying parent took a child (not their own) to the toilet, in contravention of section 167(1) of the *Law*;
- d. Allegation Four: The Provider failed to notify the Regulatory Authority of a complaint made on 15 May 2021 that the *Law* was contravened, in contravention of section 174 of the *Law*

Law

8. The following provisions of the *Law* are relevant:

Section 165 of the *Law* - Offence to inadequately supervise children

- (1) 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.

Section 167 of the *Law* - Offence relating to protection of children from harm and hazard

- (1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Section 174 – Offence to fail to notify certain information to Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider –

- (b) any complaints alleging –
 - (ii) that this *Law* has been contravened;

Penalty: \$4000, in the case of an individual.
 \$20 000, in any other case.

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

Regulation 176(2)(b) – Time to notify certain information to Regulatory Authority

For the purpose of section 174(4) of the *Law*, a notice must be provided:

- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident;

Reasons

9. Throughout the investigation, the Authority obtained information on a voluntary basis, together with evidence from the Provider produced under section 215 of the *Law*, including prescribed records, excursion risk assessment, incident report for ██████████ of 12 May 2021 (unsigned and no time of completion noted), a photograph of the injury, relevant policies and procedures, email correspondence with ██████████ and notes of concerns raised and responses. The Provider also included additional information regarding the interactions of ██████████ with educators at the Service.
10. With regards to Allegation One, the Authority considered all available evidence and noted that there was no evidence to support non-compliance in relation to environment or staffing levels. An incident report was completed, and it was noted that ██████████ had been offered an ice pack, which was refused. The incident was noted at 2:10pm and ██████████ was advised upon pick-up at 2:35pm. There is no evidence that the injury was one which warranted urgent medical attention or otherwise fell within scope of a serious incident. Accordingly, the Authority has determined that available evidence was insufficient to support an offence under section 165 or 167 of the *Law* being substantiated on the balance of probabilities.
11. With regards to Allegations Two and Three, the Authority noted that having parents as volunteers on excursions is usual practice for ACT Government preschool excursions. The Authority acknowledges that excursions and regular outings are an important part of educational programs. Excursions provide opportunities for the children to build connections with the local community and contributing to their sense of belonging and connection with the world around them. They offer children a wonderful opportunity to explore and experience their local environment.
12. Such programs are often reliant on parents' assistance to make these opportunities possible for children. In addition, Services must conduct risk assessments and ensure authorisations are obtained from families before children can attend these events. The Authority considered the Risk Assessment provided and noted that the ratio was four children to one adult, with twenty children in attendance with four parents and one LSA, with the teacher additional to that ratio.
13. Whilst it is not best practice to have parents taking children to toilets, the Authority notes that the Provider and educators have reflected on toileting processes for excursions and a review is being performed to ensure specific toileting procedures are included for excursions, as well as strategies for better support of children with additional needs, such as having a parent attend the excursion. The Authority has determined that the available evidence was insufficient to support offences under section 165 or 167 of the *Law* being substantiated on the balance of probabilities, for either allegation.
14. With regards to Allegation Four, evidence produced indicates that a complaint was made in writing by ██████████ raising numerous alleged contraventions of the *Law* relating to supervision and protection from harm. Examination of the Authority's records revealed that complaint was not notified to the Authority at any time. Accordingly, an offence under section 174 of the *Law* is substantiated on the balance of probabilities.

Decision

15. 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.
16. In this circumstance, considering the lack of previous similar offences relating to the Service and the current challenging circumstances posed by COVID-19 restrictions, the Authority has determined not to initiate statutory action but instead to issue this Administrative decision for the substantiated offence under section 174.
17. Additionally, to ensure future risk is mitigated, the Authority requests the Provider to submit evidence demonstrating that a review of excursion procedures has taken place, to include risk assessments around toileting and appropriate strategies to manage that risk. That evidence should be submitted within fourteen days of receipt of this Administrative Action to Senior Investigator Tanya Masterman on Tanya.Masterman@act.gov.au.
18. The Authority further notes that terminology in the Service's procedure around critical incidents is superseded and would benefit from a review. For example, the role of "certified supervisor" has not existed since the beginning of October 2017. It also does not refer to Regulation 12 or the obligation to notify complaints that the *Law* was contravened, which may perhaps have contributed to the failure to notify in this instance, although all nominated supervisors have an obligation to be familiar with the *Law* and *Regulations* as a primary source. The relevant procedure appears at Attachment B.

Legislation

19. The *Law* 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>.
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. Should you have any questions about this Decision please contact me on jo.williams@act.gov.au.

Yours Sincerely



Jo Williams
Director Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

6 October 2021.