

Ms [REDACTED]
Person with Management or Control
Edge Early Learning ACT Pty Ltd
Re: Edge Early Learning Higgins

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Compliance Notice

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40857439). NOT-40857439 relates to Edge Early Learning Higgins SE-40011068 (the Service) operated by Edge Early Learning ACT Pty Ltd PR-40029018 (the Provider).
2. The notification was regarding one year old child who had sustained an injury resultant from falling off a table.
3. In this instance, the Authority is satisfied that the Provider has not complied with sections of the *Education and Care Services National Law Act (ACT)* (the Law) in this instance.
4. 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

5. On 18 May 2023, the Authority received notification of an incident (NOT-40857439) from the Provider. The notification advised that on 17 May 2023, a child, [REDACTED] (DOB: [REDACTED]), had fallen off a table injuring her mouth. Refer copy of notification and additional documents submitted at Attachment A.
6. On 19 May 2023, the Provider responded to a request from the Regulatory Authority for additional information. Additional information submitted included:
 - an educator statement;
 - copy of supervision policy acknowledgement from educators; and
 - advice that a copy of CCTV footage would be provided via USB on 22 May 2023. Refer copy of correspondence and attached documents at Attachment B.
7. CCTV footage was supplied as advised. CCTV footage identified infants in a room with two educators visible. CCTV footage identified a child climbing on a table and subsequently

falling off whilst the two educators were engaged in other activities away from the table. CCTV footage identified that both educators present were not directly supervising the children at the table. Refer copy of still shots from the footage at [Attachment C](#).

Law

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

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.

Obligations upon Regulatory Authority, Providers and Services

9. The foundation for the Authority's obligations is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles. Relevant to this decision is the objective at section 3(2)(a), namely:
- “to ensure the safety, health and wellbeing of children attending education and care services”.*
10. The guiding principles of the National Quality Framework at sections 3(3)(a) and (f) of the *Law* have particular application in this instance, being:
- (a) *that the rights and best interests of the child are paramount; ...*
(f) *that best practice is expected in the provision of education and care services.*
11. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
- (c) *to monitor and enforce compliance with this law;*
(d) *to receive and investigate complaints arising under this law.*
12. The *Law* works to protect a particularly vulnerable group in our society – children – when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.

13. A key objective 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.
14. The *Law* is predominantly a protective law and the exercise of disciplinary powers in this type of regulatory context is recognised by Courts as not being punitive: *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.
15. The Authority is empowered to issue a compliance notice under section 177 of the *Law*

Section 177 of the *Law*– Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this *Law*.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty: \$6 000, in the case of an individual
\$30 000, in any other case.

Decision

16. The Authority is satisfied that, on 17 May 2023, the Provider has contravened the *Law*.
17. The Authority is satisfied that, on balance of probabilities, the Provider failed to ensure adequate supervision of an infant child, known to be [REDACTED], resulting in said child being able to crawl up onto a table unnoticed by educators in the room and subsequently falling off the table, in contravention of s165(1) of *Law*.
18. The Authority is satisfied that, the Provider failed to ensure all reasonable precautions were undertaken to protect [REDACTED] by not ensuring adequate supervision resulting in an injury to the mouth occurring, in contravention of section 167(1) of the *Law*.
19. It was noted in the CCTV footage provided that one educator was sitting on the floor with what appears to be two infants. This educator was unable to see the table that [REDACTED] was climbing on due to a tent structure located in line of site with a child inside. The second educator appears to be focused on an activity not inclusive of being directly engaged with or supervising children.
20. Furthermore, it was noted in the CCTV footage provided that when the educator heard [REDACTED] cry and attended, they also then turned their backs on another child who was in process of

attempting to crawl up onto the same table, rather than redirect the child away from the table, further supporting substantiation of the offences of s165 and s167 of the *Law*.

21. The risk to the child at the time of the incident was high, consequences could have been catastrophic with a child falling headfirst onto a hard surface.
22. It is deemed a reasonable precaution for a Provider to ensure that staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. 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.
23. Considering the evidence submitted as part of the notification I have determined that issuing a Compliance Notice would be appropriate and in the best interests of children.
24. The Compliance Notice is Attachment D to this decision letter. The Provider is required to take steps directed in the Notice to comply with the relevant provisions. The Provider must produce evidence of the steps required by **the times indicated for each step within the Notice at Attachment D**.
25. This evidence should be submitted to the Authority to Assistant Director, Janine Fairburn, at janine.fairburn@act.gov.au, or by post to:

Janine Fairburn, Assistant Director
Children's Education and Care Assurance
PO Box 158, CANBERRA ACT 2601

Appeal Rights

26. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
27. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

Legislation

28. 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>.
29. 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>

30. Should you have any questions about this Decision, or the attached Compliance Notice please contact Authorised Officer Janine Fairburn at janine.fairburn@act.gov.au.

Yours Sincerely



Jo Williams
Director – Regulatory Operations
Children’s Education and Care Assurance
Education and Care, Regulation and Support

21 June 2023