

- [REDACTED] – Stand Down letter
 - [REDACTED] – Meeting Record
 - [REDACTED] – Resignation
7. On 18 September 2024, the Provider submitted additional documents in response to a request for further information from the Authority, including:
- Working directly with children log;
 - Record of conversation;
 - Witness Statement record (1);
 - Witness Statement record (2);
 - Meeting record (1);
 - Meeting record (2);
 - Meeting Request ([REDACTED]).
8. Please note, documents referred to in paragraph 4 through 7 are not included due to size. These documents can be provided upon request.
9. NOT-00074145 further advised that steps taken by the Provider to prevent or minimise a similar incident included:
- Child's family to be contacted - record of conversation.
 - Investigation to be conducted - meetings to be held with Educators in the room, Witness statements and CCTV review.
 - Formal request to meet with subject Educator.

Law

10. The Notification engaged the following provisions of the *Law*:

Section 166(1) of the Law - Offence to use inappropriate discipline

The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to —

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Penalty: \$11 400, in the case of an individual
\$57 400, 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: \$11 400, in the case of an individual
\$57 400, in any other case.

Decision

11. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 166 and 167 of the *Law* in this instance.
12. In relation to section 166 and 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were adequately protected from harm and inappropriately disciplined while in the care of the Service on 16 September 2024.
13. The Authority is satisfied that the very nature of the matter notified, and additional information submitted by the Provider supports, on balance of probabilities, the offence being substantiated.
14. The Authority is satisfied that [REDACTED] was not adequately protected from harm, as he was inappropriately disciplined, by educators responsible for his education and care at the time.
15. The Authority wanted to issue a reminder to the Provider to ensure that educators interactions with children remain appropriate and in line with the provisions of the *Education and Care Services National Regulations 2011 (the Regulation)*, specifically regulation 155.

Regulation 155 - Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care 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.
16. 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.
 17. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
 18. This decision services to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.

19. This Decision will be recorded on the Service's 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 associated Regulations be found.

Legislation

20. 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> . 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 at vittorio.colosimo@act.gov.au.

Yours Sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Regulation and Compliance
Education Directorate

14 October 2024