

Ms [REDACTED]
Person with Management or Control
Caerus Early Learning Pty Ltd
RE: Coombs Early Learning

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action RE: NOT-40773165

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40773165) relating to Coombs Early Learning SE-40010858 (the Service) operated by Caerus Early Learning Pty Ltd PR-40013119 (the Provider).
2. The notified incident advised that an enrolled child, known as [REDACTED] (aged 3years 10months), was suspected to have been [REDACTED] which they are known to have an [REDACTED]
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 13 September 2022, the Authority received a Notification of Incident (NOT-40773165) from the Provider advising that, on 6 September 2022, a child, known to be [REDACTED] (aged 3years 10 months), was given zucchini slice which educators suspected [REDACTED] Refer NOT-40662438 at Attachment A.
5. It was further noted that [REDACTED] risk minimisation plan stated that ‘the meal will be labelled with [REDACTED] picture and full name. Refer [REDACTED] risk minimisation plan signed at Attachment B.
6. Th Educator statement refers to [REDACTED] and [REDACTED] having a conversation about who the [REDACTED] [REDACTED] plate is for. This raises suspicion that [REDACTED] meal of [REDACTED] was not labelled with his picture and full name. Refer to Educator statement at Attachment C.

Law & Regulation

7. Provisions of the *Law* and *Regulations* relevant to the notification assessment are:

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.

Regulation 170 (1) - Policies and procedures to be followed

The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under regulation 168.

Penalty: \$1000

Regulation 168 (2) – Education and care service must have policies and procedures

Policies and procedures are required in relation to the following -

- (d) dealing with medical conditions in children, including the matters set out in regulation 90

Regulation 90 (1) – Medical conditions policy

The medical conditions policy of the education and care service must set out practices in relation to the following—

- (a) the management of medical conditions, including asthma, diabetes or a diagnosis that a child is at risk of anaphylaxis;

Reasons

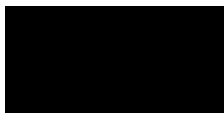
8. After carefully considering all information submitted via NOT-40773165, the Authority is satisfied that the Provider has contravened regulation 170 (1) of the *Regulations* in this instance.
9. The Authority is satisfied, on the balance of probabilities, that the Provider has not ensured that the Service follow the policies and procedures specifically [REDACTED] medical condition risk minimisation and communication plan. The very nature of the incident and admissions within the notification supports the contravention being determined.
10. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative action rather than statutory compliance actions.

11. In relation to substantiated breaches engaged by the Provide under regulation 170, the Authority requests the Provider to submit the following evidence to support risk mitigation actions have been undertaken:
 - a) Provide evidence that staff are aware of policies and procedures, specifically medical condition risk minimisation plans of children.
 - b) Provide evidence that medical condition and risk minimisation plans are being followed.
12. Requested information outlined in paragraph 11 can be submitted to Authorised Officer, Vittorio Colosimo at vittorio.colosimo@act.gov.au. The Authority requests this to occur within 14 days of receipt of this decision.
13. This Decision is issued to remind the Provider that risk minimisation plans for children are to be followed at all times to ensure the safety and wellbeing of children being educated and cared for by the Service.
14. 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

15. 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>.
16. 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>
17. If you have any questions in relation to this Decision, please contact Senior Investigator Vittorio Colosimo by email at Vittorio.Colosimo@act.gov.au.

Yours sincerely



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

11 November 2022