

Ms [REDACTED]  
Person with Management or Control  
Communities@Work  
RE: Communities@Work Mt Rogers Out of School Hours Care

Email: [REDACTED]@commsatwork.org

Dear Ms [REDACTED]

**Decision to Issue Administrative Action RE: NOT-40857521**

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40857521) relating to Communities@Work Mt Rogers Out of School Hours Care SE-00009695 (the Service) operated by Communities@Work PR-00005824 (the Provider).
2. The Notification related to a child, aged 4 years ([REDACTED]), exiting the Service unseen by educators.
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 18 May 2023, the Authority received Notification of Incident (NOT-40857521) from the Provider. The Notification advised that, on 17 May 2023, an enrolled child, [REDACTED] (4 years old), was collected from preschool at 2.50pm by an educator and taken to the OSHC space to be signed in.
5. While the child was sighted and present at the Service during group time between 3:10 and 3.18pm, the Service was advised by a teacher from Mt Rogers Primary School that the child was in the front office of the Primary School at 3.25pm.
6. NOT-40857521 and the attached internal incident report indicated that [REDACTED] had left the location of the where the Service operates from, being the hall, and walked to the school's front office. Refer relevant records at Attachment A.

## Law

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

### **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.

## Reasons

8. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under sections 165 and 167 of the *Law* in this instance.
9. The Authority is satisfied that inadequate supervision contributed to ██████ being able to leave the hall unnoticed by educators on 17 May 2023 and make her way to the school's front office. It was also noted that educators appeared unaware of ██████ absence until a school staff member returned ██████ to the Service.
10. Information gathered supports that the Provider, by not ensuring adequate supervision of children at all times, has not appeared to ensure that every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury.
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 Decision.

12. In determining this outcome, the Authority took into consideration the actions undertaken by the Provider at the time of the incident, actions advised of being undertaken via the notification, and the compliance history of the Service.
13. This Decision is issued to remind the Provider, that always, 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 protect children from harm and hazard likely to cause injury – both physically and psychologically.
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 Authorised Officer Janine Fairburn via email at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au) .

Yours Sincerely



Janine Fairburn  
Assistant Director  
Children’s Education and Care Assurance  
Education and Care, Regulation and Support

6 June 2023