

██████████
Person with Management or Control
Communities@Work
RE: Communities@Work Isabella Plains Early Childhood Services

Email: ██████████@comms@work.org

Dear ██████████

Decision to Issue Administrative Action

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated complaints alleging that the safety, health and wellbeing of a child was compromised at Communities@Work Isabella Plains Early Childhood Service SE-00011293 (the Service) operated by Communities@Work PR-00005824 (the Provider).
2. The Authority is satisfied that the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
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 22 October 2020, the Authority received a Notification of Incident (NOT-40481049) advising that on 21 October 2020, an enrolled child, known to be ██████████ ██████████ (aged three years), at the Service was able to abscond, unnoticed, for a period of less than 10 minutes. Refer Attachment A.
5. On 24 October 2020, the Authority received a complaint alleging that ██████████ ██████████ was left alone at the Service on 22 October 2020, and that ██████████ was sometimes inappropriately restrained in a highchair or stroller whilst being educated and cared for at the Service.
6. Due to the risk to children associated with alleged inadequate supervision, and a risk of harm and of hazards, the Authority determined to investigate the allegations.
7. On 27 October 2020, a notice, allowable under section 215 of the Law (215 Notice) was sent to the Provider. On 10 November 2020, the Provider responded with the requested documentation. Documentation included the following:
 - a) Working Directly with children records and child attendance records;
 - b) Staff records and enrolment records for ██████████
 - c) Documents relating to ██████████ education and care at the Service.
8. On 25 November 2020, the Authority contacted the Provider, and made arrangements to attend the Service under section 199 of the Law, on 2 December 2020. On 2 December 2020, an Authorised Officer from the Authority attended the Service and took photographs of relevant areas relating to the investigation.

9. During the investigation, the Authority also secured several witness statements.

Law

10. Provisions of the *Law* engaged by the investigation are as follows:

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.

Reasons

11. Having considered all evidence gathered through the investigation, the Authority is satisfied that the Provider has failed to comply with the *Law*.
12. The Authority is satisfied that on 21 October 2020, inadequate supervision contributed to [REDACTED] being able to abscond, unnoticed by educators, for a period of less than 10 minutes, in contravention of sections 165(1) and 167(1) of the *Law*.
13. The Authority is satisfied that admissions by the Provider via the very nature of NOT-40481049, as well as corroboration of events by witnesses for events occurring 21 October 2020 support substantiation of the offences under sections 165 and 167 of the *Law*.
14. The Authority noted the Provider submitted evidence to support that appropriate policies, procedures and practices were now in place to mitigate the risk of a similar incident occurring in the future. The Authority agreed that the advised of risk mitigation strategies meet the expectations of the Authority.
15. In regard to the allegations that, on 22 October 2020, [REDACTED] was left alone, unsupervised, at the Service, and that he was occasionally inappropriately restrained in a highchair or stroller, the Authority has determined that there is insufficient evidence to support the allegations as stated.

Decision

16. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Many of these options allow the Authority to publish details of substantiated non-compliance.

17. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has determined to issue you with this Administrative Action rather than impose any statutory compliance actions.
18. In determining whether to issue the Provider with an Administrative Action, the Authority took the following into consideration:
 - a) The Notification of Incident was submitted within the prescribed timeframe;
 - b) The young person was unaccounted for a short period of time – being between five and ten minutes;
 - c) The Provider's response to the incident and implementation of risk mitigation strategies at the earliest possible opportunity; and
 - d) The Provider has advised of strategies which, if continued and followed correctly, are deemed appropriate in mitigating risk of a similar incident.
19. Regarding the substantiated offences under sections 165(1) and 167(1) of the *Law*, the Authority is satisfied the subsequent strategies implemented by the Provider will meet the expectations of the Authority, and therefore no further action is required.
20. This Decision will be recorded on your Service 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 *Regulations* be found.

Legislation

21. 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>.
22. 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>
23. If you have any questions in relation to this letter, please contact Authorised Officer Jeff Beaver on (02) 6207 3917 or by email at.jeffrey.beaver@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Early Childhood Policy and Regulation
ACT Education Directorate

04 March 2021