



██████████
Person with Management or Control
ACT Education Directorate
RE: Calwell Primary School – Preschool Unit

Email: schooloperations@act.gov.au

Dear ██████████

Decision to issue Administrative Action

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40763950) relating to the operation of Calwell Primary School – Preschool Unit SE-00011171 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
2. The Authority determined that there was sufficient evidence to support a case to answer for the Provider regarding suspected offences under the *Law*. However, the Authority’s final determinations was not made until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason a Show Cause Notice (Notice) was sent to the Provider.
3. Web addresses to the *Education and Care Services National Law Act (ACT)* (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 12 September 2022, the Authority issued the Provider a Notice. Refer copy of the Notice (minus attachments due to size) at Attachment A. Please note that attachments can be provided again upon request.
5. On 21 September 2022, the Provider requested an extension to respond to the Notice, the Authority was agreeable to an extension until 11 October 2022. A response to the Notice from the Provider was received on 11 October 2022. Refer copy of the Provider’s response (minus attached supportive documentation due to size) at Attachment B. Please note that attachments can be provided again upon request.
6. The Authority acknowledges the following supportive evidence was submitted by the Provider with the response:
 - a) Evidence Outline;
 - b) Preschool Procedure Review Committee Meeting Minutes 9 Sept 2022;
 - c) Week 8 PLC;
 - d) Week 6 Term 3 PLC Additional Notes; and
 - e) Absconding Plan ██████████

Law

7. The Notification and Notice engaged the following provisions of the *Law*:

Section 165(1) of *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.

Decision

8. The Authority has considered all the information supplied by the Provider, including the response to the Notice, and is satisfied that there is sufficient evidence to ground an offence under section 165 of the *Law*, engaging an offence under section 167 of the *Law* in this instance.
9. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure adequate supervision at all times on 22 August 2022. This resulted in ██████████ being able to, unchallenged, use a toy to step on and gain access to the preschool gate, absconded from the preschool space, run out of the school grounds, and experience a near miss with a postal motorbike.
10. Furthermore, the Authority is satisfied, on balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring adequate supervision of ██████████, and by not having sufficient support and supervision plans in place for him even though he had been identified as requiring allied health support at school and universal supports were in place, in contravention of section 167(1).
11. The very nature of the incident, admissions to the incident occurring as detailed and the Provider's management of matter supports the contravention being determined.
12. 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.
13. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the demonstrated 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 to address the non-compliances.

14. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of all children at all times. 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.
15. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in any future applications for approvals, amendments, or waivers. They may also be considered in determining the action to be taken, should further similar breaches of the *Law* or *Regulations* be substantiated.

Legislation

16. 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>.
17. Should you have any questions about this Decision please contact Assistant Director Janine Fairburn at Janine.fairburn@act.gov.au.

Yours Sincerely,



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

21 November 2022