



██████████
Person with Management and Control
FEL Child Care Centres 4 Pty Ltd
RE: Busy Bees at The Park

Email: ██████████
Cc: ██████████

Dear Ms ██████████

Decision to issue Administrative Letter RE NOT-40502484 & NOT-40502337

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 conducted an assessment of two Notifications of Incident (NOT-40502484 and NOT-40502337) relating to the operation of Busy Bees at the Park SE-00009849 (the Service), operated by FEL Child Care Centres 4 Pty Ltd PR-40004076 (the Provider).
2. The Notifications related to two children, ██████████ (aged 2:9) and ██████████ (aged 3:5) who were missing and unaccounted for during a period of under ten minutes.
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 letter.

Facts

4. On 15 January 2021, the Authority received NOT-40502484 (the ██████████ Notification) and NOT-40502337 (the ██████████ Notification) from the Provider of an incident on 13 January 2021.
5. The incident involved ██████████ and ██████████ leaving the Toddler 3 room unnoticed through a kitchenette into Kindergarten 1 (which was empty in preparation for vacuuming) then to the Nursery 3 room, whereupon they were discovered alone by an educator and returned to Toddler 3. Refer Notifications and relevant documentation at Attachment A.
6. Additional documentation and information were requested by the Authority on 15 January 2021, with a response received 22 January 2021. Additional information received included:
 - a. Working Directly with Children records and child attendance records for 13 January 2021;
 - b. Copy of a maintenance report and NOT-40502337;
 - c. Educator witness statements and signed supervision policy; and

- d. Huddle meeting minutes;
7. The Notification and additional documentation included evidence of the risk mitigation steps performed by the Provider including:
 - a. Discussions with educators on making sure doors are adequately closed to adjoining rooms and monitoring doors when using as entry and egress points;
 - b. A job was logged with maintenance to check doors were closing securely and do not require any repairs. That occurred on 15 January 2021;
 - c. Witness statements were gathered from educators to use to identify continuous improvement from the incident;
 - d. Review of risk assessment of the Toddler 3 room.

Law

8. The facts as outlined in the Notification support contravention of the following:

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.

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.

Decision

9. The Authority has considered all the information supplied by the Provider and is satisfied that the failure to notice [REDACTED] and [REDACTED] leaving the Toddler 3 Room on 13 January 2021 constituted a failure to adequately supervise all children being educated and cared for by the Service, in contravention of section 165(1) of the *Law*, which engages a further contravention of section 167(1) of the *Law*.
10. However, in mitigation, the Authority notes that [REDACTED] and [REDACTED] were not missing for more than a few minutes, they did not leave the building, and steps have been taken to address the incident, including signed review of supervision policy by all educators, maintenance checks on doors, and review of risk assessment. The Provider appears to have managed the incident appropriately, meeting the expectations of the Authority.
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 this Administrative Decision.

12. Although no further action is being taken by the Authority, this decision is a reminder to the Provider of its obligations to ensure that all educators are aware of the need for continual and active supervision of all children being educated and cared for by the Service.
13. 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 breaches of the *Law* or *Regulations* be substantiated.

Legislation

14. 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>.
15. 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>
16. Should you have any questions about this Decision please contact me at Janine.fairburn@act.gov.au.

Yours Sincerely,



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

4 February 2021