

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.

Reasons

7. After carefully considering all information submitted by the Provider via the notified incident, the Authority finds a contravention of section 165(1) of the *Law* against the Provider have been substantiated in this instance.
8. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured that adequate supervision was being provided at all times. The Authority is satisfied that this failing has resulted in [REDACTED] [REDACTED] being left unsupervised in the outdoor play area on 9 February 2024.
9. The Authority noted that the exact time that [REDACTED] was unaccounted for is not confirmed by NOT-40953204, only the timeframe between the parent arriving, to when the child was subsequently located. CCTV indicated that [REDACTED] was unaccounted for/unsupervised for approx. 10 minutes.
10. The very nature of the incident, and corroborating CCTV footage submitted by the Provider, confirming that [REDACTED] was not being supervised at all times when in the outdoor space, supports the substantiation of the offence.
11. Considering the evidence, the objectives and guiding principles of the *Law*, and the compliance history of the Service, the Authority has decided to issue this administrative action rather than statutory compliance action in this instance.
12. The Authority notes that the Provider did not complete the IO1 Notification of Incident form in its entirety. In addition to not completing the child's details, there is also no advise/evidence of what steps the Provider has taken to prevent or minimise this type of incident in the future.
13. The Authority requests that the Provider submit evidence of strategies/actions that have been undertaken and implemented by the Provider to mitigate risk of a similar incident occurring.
14. Please provide your response for the requested information in writing, to me at Janine.fairburn@act.gov.au within 7 days of receipt of this Decision.

15. 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 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.
16. In addition, ensuring educators are not only are aware of and understand the Service’s policy and procedures, but also practicing these regularly, including those relating to supervision and transitions of children, is considered a reasonable precaution to take to protect children from harms and hazards.
17. 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

18. 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>.
19. 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>
20. If you have any questions in relation to this Decision, please contact me by email at Janine.fairburn@act.gov.au.

Yours sincerely



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

4 March 2024