

Ms [REDACTED]
Person with Management or Control
Oorama Operations Pty Ltd
RE: Symonston Kinder Haven

Email: [REDACTED]
[REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action RE: NOT-40832112

1. As you are aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into Notification of Incident (NOT-40832112) relating to educator conduct at Symonston Kinder Haven SE-00009842 (the Service), operated by OORAMA OPERATIONS PTY LIMITED PR-40001489 (the Provider).
2. Web addresses to the *Education and Care Services National Law (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

3. On 8 March 2023, the Authority received a Notification of Incident (NOT-40832112) from the Provider, advising that on 28 February 2023, CCTV footage identified an educator inappropriately interacting/disciplining a child.
4. Specifically, it was advised that an interaction between educator [REDACTED] and enrolled preschool child [REDACTED] occurred 28 February 2023. The interaction involved Ms [REDACTED] grabbing [REDACTED] and moving him with force away from a sandpit. Refer documents notified at Attachment A
5. On 8 March 2023, additional information was requested by the Authority, with the Provider responding 10 March 2023. Refer copy of correspondence at Attachment B.
6. Additional information included:
 - a) CCTV Footage (incident 6 minutes into footage); and
 - b) Provider obtained Witness statements;
 - c) Child Protection Risk Report and initial assessment/Reportable conduct assessment report;
 - d) Working Directly with Children records and ratio check records for 28 February 2023.
7. On 3 April and 6 April 2023, additional information was submitted to the Authority from the Provider via the ACECQA NQA ITs portal. Refer Attachment C and Attachment D.

Law

8. Relevant provisions of the *Law* and *Regulations* engaged by the notification are as follows:

Section 166(1) of the Law – Offence to use inappropriate discipline

The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to-

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Penalty: \$10 000

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.

Regulation 155 - Interactions with children

An approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that-

- a) encourages the children to express themselves and their opinions; and
- b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- c) maintains at all times the dignity and rights of the child; and
- d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- e) Has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Reasons

9. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is not satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under section 166(1) of the *Law* in this instance. Information does not support that the interaction was with intent to discipline ██████████ more so it was a reactive interaction to move him from one area to another.
10. However, the Authority is satisfied that although Ms ██████████ actions do not meet the threshold of inappropriate discipline, the interaction between Ms ██████████ and ██████████ on 28 February 2023 was inappropriate, engaging a breach of Regulation 155 and subsequent contravention of section 167(1) of the *Law*.
11. Ensuring educators are appropriately interacting with children at all times is considered a reasonable precaution taken to protect children from harm likely to cause injury.
12. The interaction between Ms ██████████ and ██████████ did not maintain ██████████ dignity and rights and did not give ██████████ guidance and encouragement toward acceptable behaviour. Acceptable behaviour being to return indoors autonomously in a self-regulated manner.
13. In deciding if compliance action should be taken, the Authority has considered all relevant information supplied by the Provider regarding the Provider's management of the incident and the Services compliance history.

14. In consideration of all relevant information, the Authority has determined in this instance not to initiate statutory compliance action regarding the substantiated contravention of section 167(1) and of the *Law*. To address the non-compliances an administrative decision has been issued.
15. The Authority requests further information from the Provider to demonstrate how the Provider is ensuring that all educators are aware of and understand the expectations of the Provider and the *Law*. Principally relation to only engaging in appropriate interactions with children. Please submit this information to the Authority by close of business Friday 5 May 2023.
16. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*. In particular, the obligation that the laws and regulations are always met to ensure every reasonable precaution is taken to protect children from inappropriate interactions likely to cause injury.
17. Furthermore, this Decision is to advise the Provider that the Authority will be monitoring more strictly how the Service is being operated, and that any further non-compliances may result in stronger enforcement measures being actioned by the Authority.

Legislation

18. The *Law* applies to you as an approved provider and any approved service that the Provider operates.
19. 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>.
20. 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>
21. 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.
22. If you have any queries regarding this Decision, please contact Authorised Officer Janine Fairburn at janine.fairburn@act.gov.au.

Yours sincerely



Jo Williams
Director Regulatory Operations
Children's Education and Care Assurance
Early Childhood Policy and Regulation

5 May 2023