



Ms [REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Ainslie School - Ainslie Baker Gardens Preschool Unit

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Letter

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed Notification (NOT-40596314) relating to the operation of Ainslie School - Ainslie Baker Gardens Preschool Unit SE-00011166 (the Service), operated by ACT Education Directorate, PR-00006465 (the Provider).
2. The Notification related to a missing and unaccounted for child.
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 22 November 2021, the Authority received a Notification and attachments from the Provider advising two children, believed to be [REDACTED] (4:10) and [REDACTED] (5:3), had climbed over a fence and walked across Baker Gardens and down Campbell Street where they were sighted by a staff member and subsequently walked/escorted back to the Preschool. Refer Notification and documents at Attachment A.
5. On 23 November 2021, the Authority sought additional information from the Provider, which was received on 25 November 2021. Refer email correspondence at Attachment B.

Law

6. The following provisions of the *Law* were relevant to the assessment:

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 and Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that on 22 November 2021, inadequate supervision contributed to the two children being able to leave the service premises. Inability to ensure adequate supervision at all times engages a failure to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.
8. The Authority is satisfied that these failures contributed to ■■■ and ■■■ being able to climb the boundary fence and walk off unnoticed by educators until after they had gone past service boundaries. The very nature of the Notification and accompanying documentation submitted by the Provider, support offences under sections 165 (1) and 167(1) of the *Law* being substantiated.
9. 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 the Provider in achieving compliance and improved outcomes for children.
10. When deciding what appropriate action to take, the Regulatory Authority took the following matters into consideration:
 - a) The age of the children and associated risks associated with the children being unsupervised in a public space;
 - b) The length of time that the children were unsupervised and unaccounted for;
 - c) The Provider has submitted advice that the supervision policy was reviewed, and changes implemented and communicated to staff; and
 - d) The Provider has submitted advice that a work order has been initiated to raise the height of the fence.
11. In this circumstance, the Authority has also considered the Service's compliance history and determined not to initiate statutory action but instead to issue this Administrative Decision, with no additional need for further action.
12. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future similar breaches of the *Law* or *Regulations*.

Legislation

13. The *Law and Regulations* 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>
14. 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>
15. Should you have any questions about this Decision please contact Senior Investigator Sheree Lockwood on sheree.lockwood@act.gov.au.

Yours Sincerely,



Clare Brookes
Senior Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

08 December 2021