

██████████  
Person with Management or Control  
Ainslie Primary School P & C Assn After School Care Sub Committee  
RE: Ainslie Out of School Hours Care

Email: ██████████  
██████████

Dear Ms ██████████

**Decision to Issue Administrative Action RE: NOT-40721652**

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of Incident (NOT-40721652) relating to the operation of Ainslie Out of School Hours Care - SE-00009639 (the Service) operated by Ainslie Primary School P & C Assn After School Care Sub Committee - PR-00005799 (the Provider).
2. The Notification advised of an incident occurring 1 June 2022, whereby a child being educated and cared for by the Service was mistakenly locked in or locked out of the Service premises or any part of the premises.
3. The Authority is satisfied that the Provider has not complied with provisions of the *Education and Care Services National Law Act (ACT)* (the *Law*) in this instance. Web addresses for the *Law* and the *Regulations* are provided for your convenience at the end of this decision.

**Facts**

4. On 3 June 2022, the Authority received a Notification of Incident (NOT-40721652) advising that a child, known to be ██████████ (██████ aged 7years, was unaccounted for at the time that the child's parent arrived for pick up. The child was subsequently located standing against a wall at the end of the ramp (around 15 metres away) – outside of the hall. Refer copy of NOT-40721652 at Attachment A.
5. On 6 June 2022, additional information was requested by the Authority from the Service Director, ██████████, which was responded to 7 June 2022. Documents submitted by the Service Director on 7 June 2022 included:
  - a) Incident meeting minutes for 2 June 2022 (Attachment B);
  - b) Supporting Documentation (Attachment C); and
  - c) Summary of Child attendance for 1 June 2022;

6. On 16 June 2022, the Authority requested a chronology of events to be forwarded for 1 June 2022 from the Service Director, which was responded to 17 June 2022. Specifically, the chronology was to identify when ■ was last accounted for prior to being located outside at 5:47pm by staff – being last accounted for at 5:30pm. Refer copy of Chronology at Attachment D.

### **Law**

7. Provisions of the *Law* relevant to the investigation are:

#### **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.

### **Reasons**

8. After carefully considering all information submitted to the Authority, the Authority finds contraventions of sections 165(1) and 167(1) of the *Law* against the Provider have been substantiated in this instance.
9. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured adequate supervision at all times, which resulted in ■ being able to exit the hall, unnoticed by educators. The very nature of the incident, admissions within the Provider's notification and management of matter supports the contravention being determined.
10. Furthermore, the Authority is satisfied that the Provider, by not ensuring adequate supervision, has not ensured all reasonable precautions have been taken to protect children, specifically ■ in this instance being unsupervised outside in the dark, from harm and hazard likely to cause injury, engaging the substantiated offence under section 167(1) of the *Law*.

11. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken by the Provider to mitigate risk of a similar incident, the Authority has decided to issue this administrative decision rather than statutory compliance actions to address the substantiated non-compliance.
12. In information submitted by the Provider, it is noted that the following actions were undertaken to mitigate risk of a similar incident included:
  - a) Reflections identifying that due to the time of day, it was noted that all present educators are often busy packing away, talking to parents, and engaging with groups of children.
  - b) Changes have been made to ensure that the staff that are present between 5:30pm and 6pm can focus solely on parents and children. An educator before 5:30 pm will oversee ensuring all end of day tidying and sorting is completed before leaving at 5:30 pm allowing for better supervision after 5:30pm.
  - c) Reflections noted that the Service currently has 4 educators on the floor with up to 30 children between 5:30pm and 6pm, which is sufficient. As part of the 5:30pm checklist, the staff member is to ensure all children are present and accounted for on coming inside. Of the 3 hall doors, only one will be locked (it is always locked when closed) and the other two will remain open until 6pm.
  - d) During the 2:30 pm pre-shift meeting, all staff were advised of this incident and always stressed the importance of supervision of the children as incidents can happen very quickly.
13. 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.
14. 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**

15. 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>.
16. 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. 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  
ACT Education Directorate

8 July 2022