



[REDACTED]
Person with Management or Control
Community Service #1 Incorporated
RE: Acacia Children's Education and Care Centre

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Letter RE NOT-40450222

1. As you are aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an assessment into a Notification of Incident (NOT-40450222) relating to the operation of Acacia Children's Education and Care Centre, SE-0009833 (the Service), operated by Community Service #1 Incorporated, PR-00005865 (the Provider).
2. The Notification (NOT-40450222) related to a child, known to be [REDACTED] (aged three years), exiting the Service unnoticed on 25 June 2020.
3. Web addresses to the *Education and Care Services National Law Act 2010*¹ (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 26 June 2020, the Authority received a NOT-40450222 from the Provider in relation to an enrolled child [REDACTED], who exited the premises, unwitnessed by educators, and returned by her father. Refer submitted Notification and Incident Report at Attachment A.
5. On 29 June 2020, additional information was requested by the Authority, and subsequently received on 30 June 2020. Additional information and supportive evidence of actions included:
 - a) Working directly with children records and child attendance records for the whole of Service for 25 June 2020;
 - b) Supervision and collection of children, policy/procedure, and any protocols in place at the time of the incident;
 - c) Evidence demonstrating that a review of supervision and collection of children policy/protocols has occurred, with any changes implemented and communicated to staff, to mitigate risk of similar incidents occurring;
 - d) Documents pertaining to any investigations undertaken in relation to this notification.
 - e) Diagram or mud map of the service indicating incident location.

¹ As adopted in the ACT via the *Education and Care Services National Law (ACT) Act 2011*.

6. On 10 July 2020, further information was received by the Authority from the Provider, which included the Providers Investigation Report and a Risk Analysis. Refer relevant documents received at Attachment B.

Law

7. Provisions of the *Law* relevant to the assessment engaged 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.

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.

Decision

8. The Authority has considered all the information supplied by the Provider, and is satisfied that inadequate supervision contributed to [REDACTED] being able to exit the Service unnoticed by educators on 25 June 2020, in contravention of section 165(1) of the *Law*, and engaging section 167(1) of the *Law*.
9. However, the Authority notes that the Provider investigated the incident quickly, appears to have appropriately managed risk moving forward, and addressed supervision failures identified through the Provider's investigation.
10. 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 you this Administrative Letter.
11. This Letter is issued to remind the Provider that at all times, staffing and supervision levels need to meet the emotional, developmental and physiological needs of children and educators alike. 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 – especially in rooms that cater to mixed age groups where the ratio should be calculated to the age of the youngest child in the room.

12. Furthermore, this Letter is to advise the Provider that the Regulatory 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 Regulatory Authority.
13. The Authority would encourage the Provider to follow through with the recommendations indicated in part 3 of the Provider's Investigation Report (Attachment B).
14. The Authority would like to take this opportunity to thank the Provider for their engagement and assistance in relation to the Authority's assessment of this matter.

Legislation

15. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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 National Law is made up of an Act and Regulations which can be viewed at:
<http://www.acecqa.gov.au/national-law>, and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>
17. 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

14 July 2020