

Mr [REDACTED]
Person with Management or Control
KIDS BIZ HOLIDAYS & SPORTS PTY LTD
RE: Kids Biz OSHC (Mother Theresa)

Email: [REDACTED]@kidsbizoshc.com.au

Dear Mr [REDACTED]

Decision to Issue Administrative Action RE: NOT-40964251

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 Notification of Incident (NOT-40964251) relating to Kids Biz OSHC (Mother Theresa)- SE-40003292 (the Service) operated by KIDS BIZ HOLIDAYS & SPORTS PTY LTD - PR-00008211 (the Provider).
2. NOT-40964251 advised of a circumstance where a 9-year-old child appeared to be missing or couldn't be accounted for on 7 March 2024.
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 *National Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 8 March 2024, the Provider submitted NOT-40964251, advising that [REDACTED] (aged 9 years) was sent to the office, and then subsequently the carline as he was not identified on the senior roll for sign in on his first day of attendance at the Service.
5. Furthermore, the notification advised that [REDACTED] was later identified on the junior roll, however, by the time that this had occurred [REDACTED] had left the school and walked home. Refer copy of NOT-40964251 and attached incident report at Attachment A.

Law

6. Provisions of the *Law* relevant to the Notification are:

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: \$11 400, in the case of an individual
 \$57 400, 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 167(1) of the *Law* against the Provider has been substantiated in this instance.
8. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider has not ensured that an adequate process for accounting for children, especially those attending for the first time, was in place to ensure that they were supported in transitioning to a new environment, and that educators were aware of and could identify new children expected to attend so as to provide greater accountability.
9. The Authority is satisfied that this failing has resulted in ██████ being redirected away from the Service on 7 March 2024, rather than signed in and supported to engage in the new environment.
10. The very nature of the incident, and additional information submitted by the Provider, confirming errors occurring with the enrolment details, and lack of educator awareness as to the child's identity further supports the offences being substantiated.
11. The Authority is satisfied, in this instance, that by not having adequate processes to account for new enrolments attending, the Provider has not ensured all reasonable precautions were taken to protect a ██████ from harms and hazards likely to cause injury.
12. The Authority acknowledges the advice submitted via the notification stating that the Provider has taken steps to prevent or minimise this type of incident in the future.
13. Considering the evidence, the objectives and guiding principles of the *Law*, the actions taken by the Provider in response to the incident, and the compliance history of the Service, the Authority has decided to issue this administrative action rather than statutory compliance action in this instance.
14. The Authority strongly encourages the Provider to review current transition processes with consideration and communication with the school, via Committee of Practice meetings, as required under the Deed agreement to further support quality and safe transitions of children between the School and the Service.
15. 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

16. 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>.
17. 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>

18. 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

10 April 2024