

██████████  
Person with Management or Control  
The Burgmann Anglican School  
RE: Burgmann Anglican School Early Learning Centre

Email: ██████@burgmann.act.edu.au

Dear ██████████

**Decision to Issue Administrative Action RE: NOT-40962218**

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Serious Incident (NOT-40962218) relating to Burgmann Anglican School Early Learning Centre SE-40016077 (the Service) operated by The Burgmann Anglican School PR-00005811 (the Provider).
2. The notification advised of a circumstance where a child being educated and cared for at the Service appeared to be missing or could not be accounted for.
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 associated *Regulations* are provided for your convenience at the end of this decision.

**Facts**

4. On 4 March 2024, the Authority received a Notification of Incident (NOT-40962218) from the Provider advising that, on Friday 1 March 2024, there was an incident in the Early Learning Centre where a child, ██████████, exited the Service unaccompanied by a parent.
5. The attached incident report to NOT-40962218 advised that ██████ was found in the front car park by a parent of another child and returned to one of the Service’s educators. Furthermore, the incident report identified that ██████’s parent was notified of the incident on Monday 4 March 2024 at 1:11pm. Refer relevant records at Attachment A.

**Law**

6. Provisions of the *Law* relevant to the notification assessment are:

**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:           \$11 400, in the case of an individual  
                      \$57 400, 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:           \$11 400, in the case of an individual  
                      \$57 400, in any other case.

**Reasons**

7. After carefully considering all information submitted via the NOT-40962218, the Authority is satisfied that the Provider has contravened sections 165(1) and 167(1) of the *Law* in this instance.
8. The Authority is satisfied that the Provider has not ensured adequate supervision, at all times, on 1 March 2023, resulting in [REDACTED] exiting the Service unnoticed by educators, and unaccompanied by a parent, engaging a contravention of section 165(1) of the *Law*.
9. Furthermore, the Authority is satisfied, on balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring adequate supervision of the children or have had educators confident in responding appropriately, in contravention of section 167(1) of the *Law*.
10. The very nature of the incident, admissions to the incident occurring as detailed and the Provider's management of matter supports the contravention being determined.
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 action rather than statutory compliance actions.
12. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of all 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.
13. 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 similar breaches of the *Law* or associated *Regulations* be found.

**Legislation**

14. 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>.

15. 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>

16. If you have any questions in relation to this Decision, please contact me by email at [Janine.Fairburn@act.gov.au](mailto: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