



Mr [REDACTED]
Person with Management or Control
Affinity Education Group Limited
RE: Papilio Early Learning Yarralumla

Email: [REDACTED]

Dear Mr [REDACTED]

Decision to issue Administrative Action RE NOT-40584600

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed a Notification of a Complaint (NOT-40584600) relating to the operation of Papilio Early Learning Yarralumla, SE-00009805 (the Service), operated by Affinity Education Group Limited, PR-40001112 (the Provider).
2. The Notification related to multiple instances of inadequate toileting.
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 19 October 2021, the Authority received a Notification from the Provider of a complaint made by a parent to the Provider's Family Experience Team that their enrolled child, known to be [REDACTED] (preschool age) was left in her home nappy all day on five occasions. The complaint referred to an earlier complaint made to the Centre Manager on 14 July 2021 after the first occasion, and three other instances in between that date and 18 October 2021. Refer Notification and attached documents at Attachment A.
5. On 25 October 2021, the Authority sought additional information from the Provider, which was received on 28 October 2021. Refer Attachment B.
6. The documentation received from the Provider included:
 - a. Records of counselling for three educators from the relevant room;
 - b. A Storypark communication to educators;
 - c. A link to the Provider's notification of complaints process and acknowledgment by the current nominated supervisor, [REDACTED] that the initial complaint (14 July 2021) was not notified due to her lack of knowledge when acting as centre manager and later stepping into the role as centre manager on 26 July 2021.
7. The Authority's records indicate that the former Nominated Supervisor, [REDACTED] ceased her role on Friday 30 July 2021. [REDACTED] commenced the role of nominated supervisor on Monday 2 August 2021.

8. There was no response to the Authority's query regarding the alleged three incidents in between 14 July 2021 and 18 October 2021.

Law

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

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.

Section 174(2) of the *Law* – Offence to fail to notify certain information to Regulatory Authority

An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider-

- (a) any serious incidents at the approved education and care service;
- (b) any complaints alleging –
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this *Law* has been contravened'
- (c) information in respect of any other prescribed matters.

Penalty: \$4000, in the case of an individual.
\$20 000, in any other case.

Reasons and Decision

10. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities that the Provider has failed to take reasonable precautions to protect a child, [REDACTED], from harm in that she was not adequately toileted on 14 July 2021, 18 October 2021, and potential other occasions (dates unknown).
11. The Authority is also satisfied on the balance of probabilities that the Provider has failed to notify at least one complaint that the *Law* was contravened, being a complaint made on 14 July 2021 that [REDACTED] had not been toileted that day.
12. It appears from information provided that communication amongst educators in [REDACTED] room was not adequate, as [REDACTED] had previously been using a toilet prior to lockdown, and not required nappies. However, it is concerning that entire days passed with [REDACTED] in a nappy, not noticed by educators, resulting in what was described as heavy soiling and rashes.
13. The documentation submitted by the Provider with the notification supports offences under sections 167(1) and 174(1) of the *Law* being substantiated on the balance of probabilities.
14. 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 Decision.

15. In determining this action, the Authority considered that:
 - a. [REDACTED] had previously been toilet-trained;
 - b. The Provider had nappy charts available;
 - c. The Provider has now taken steps to address inadequate toileting;
 - d. The Provider has an appropriate process in place for notifying incidents and complaints, which the current Nominated Supervisor is now aware of.
16. Regarding the substantiated offence under section 167 of the *Law*, the Authority requires the Provider to produce evidence that all educators at the Service are aware of and understand nappy changing and toileting procedures, including how children's changing toileting needs are to be documented and monitored.
17. It is noted that documents submitted by the Provider indicate that educators were required to sign off on reading and understanding the procedure, but no evidence of that taking place has been produced. Such evidence should be produced, within 14 days of receipt of this letter, to Senior Investigator Tanya Masterman on Tanya.Masterman@act.gov.au.
18. 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 breaches of the *Law* or *Regulations*.

Nominated Supervisors – Capacity

19. Documentation relevant to the notification gives rise to concern regarding the Provider's decision to appoint a nominated supervisor who may not have had the appropriate level of knowledge and experience to undertake the role. The initial complaint of 14 July 2021 was at a time when the previous nominated supervisor remained in the role, but it seems that [REDACTED] was acting centre director on 14 July 2021.
20. It appears that multiple complaints were raised with regarding the lack of nappy changing and none were notified as required until the parent complained directly to the Provider. It also seems that the issue was not adequately addressed at service level by ensuring appropriate processes were in place around communication and monitoring of children's toileting needs.
21. As you are aware, it is an offence under section 161A of the *Law* for an approved provider to nominate an individual to be nominated supervisor of a service unless the individual meets the prescribed minimum requirements for nomination. Those minimum requirements are set out in Regulation 117C below:

Regulation 117C – Minimum requirements for a nominated supervisor

- (1) For the purposes of section 161A of the Law, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must:
 - (a) have attained the age of 18 years; and
 - (b) have adequate knowledge and understanding of the provision of education and care to children; and
 - (c) have the ability to effectively supervise and manage an education and care service.

22. At this point, the Authority is not making additional enquiries regarding the nominated supervisor's knowledge and management capacity. However, the Authority's compliance and monitoring audit program is about to recommence as COVID-19 restrictions lift. As part of that program, the capacity of nominated supervisors is monitored, and they are expected to demonstrate adequate knowledge of their responsibilities. If evidence obtained supports a lack of fitness for the role of nominated supervisor, appropriate action will be taken by the Authority.

Legislation

23. 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>
24. 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>
25. Should you have any questions about this Decision please contact Senior Investigator Tanya Masterman on Tanya.Masterman@act.gov.au.

Yours Sincerely,



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

5 November 2021