

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

Email: [REDACTED]@affinityeducation.com.au
[REDACTED]@affinityeducation.com.au

Dear Mr [REDACTED]

Decision to issue Administrative Action RE NOT-40593048

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently assessed Notification (NOT-40593048) 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 a missing and unaccounted for child.
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 11 November 2021, the Authority received a Notification and attachments from the Provider advising a child, believed to be [REDACTED] (2:9 old), was unsupervised for approximately 14 minutes in the outdoor space before being located by a staff member proceeding on a break. Refer Notification and documents at Attachment A.
5. Documents received from the provider included the following:
 - a. Incident Report.
 - b. Educator counselling records.
6. On 12 November 2021, the Authority sought additional information from the Provider, which was received on 15 November 2021. Refer Attachment B.
7. The documentation received from the Provider included:
 - a. Educator Sign PDF; and
 - b. Supervision Procedure link PDF

Law

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

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.

Reasons and Decision

9. 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 adequately supervise a child in the outdoor space on 11 November 2021, and therefore, failed to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.
10. The Authority is satisfied that these failures contributed to [REDACTED] (2:9 old), was unsupervised for approximately 14 minutes in the outdoor space before being located by a staff member.
11. The very nature of the Notification and accompanying documentation submitted by the Provider, support offences under sections 165 (1) and 167(1) of the *Law* being substantiated.
12. 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 the Provider in achieving compliance and improved outcomes for children.
13. In determining this decision, the Authority has considered the compliance history of the Service, the age and potential risks associated to the child in this matter, and recent Assessment and Rating Report dated 27 August 2021, raising concerns relating to National Quality Standard 2.2.1 - reasonable precautions and adequate supervision ensuring children are protected from harm and hazard.

14. In this circumstance, noting actions already undertaken by the Provider in regard to this matter, the Authority has determined not to initiate statutory action but instead to issue this Administrative Decision, with the clear understanding that any further similar non-compliance with the *Law* will result in escalated regulatory action.
15. Regarding the substantiated offences under section 165 and 167 of the *Law*, the Authority requires evidence demonstrating how the Provider is monitoring and ensuring educators are aware of, and follow, the expectations to adequately supervise all children at all times, whilst in the care of the Service.
16. Furthermore, the Authority requires the Provider to furnish supervision plans currently implemented, and, noting that counselling of educators already undertaken, evidence of any other strategies implemented to mitigate risk to children from a similar incident.
17. Evidence should be produced, within 14 days of receipt of this letter, to Senior Investigator Sheree Lockwood at sheree.lockwood@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*.

Legislation

19. 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>
20. 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>
21. Should you have any questions about this Decision please contact Senior Investigator Sheree Lockwood on Sheree.lockwood@act.gov.au.

Yours Sincerely,



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

26 November 2021