



Ms [REDACTED]
Person with Management or Control
ACT Education Directorate
Wanniassa School – Preschool Unit

Email: [REDACTED]

Dear [REDACTED]

Decision to issue Administrative Action RE NOT-40547296

1. As you may be aware, Authorised Officers of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a Notification of Incident (NOT-40547296) relating to the operation of Wanniassa School – Preschool Unit SE-00011230 (the Service), operated by ACT Education Directorate PR-00006465 (the Provider).
2. The Notification related to a circumstance where a child being educated and cared for by the Service appears missing/unaccounted for on 7 June 2021.
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 10 June 2021, the Authority received NOT-40547296 (the Notification) from the Provider advising that, on 7 June 2021 a child, known to be [REDACTED] aged 4 years), was able to leave the service premises unnoticed by climbing over a fence. Refer copy of the Notification at [Attachment A](#) and additional information submitted via an absconding plan at [Attachment B](#).
5. The Authority assessed the information provided in the Notification. The information satisfied the Authority that an offence had been committed against the *Law* at the Service.

Law

6. The following provisions of the *Law* and *Regulations* are relevant to the facts as outlined in the Notification:

Section 165 of the *Law* - Offence to inadequately supervise children

- (1) 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.

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

An approved provider must notify the Regulatory Authority of any serious incident at the approved education and care service.

Section 174(4)(a) of the *Law* – Offence to fail to notify certain matters to Regulatory Authority

A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 176(2)(a) (ii) provides that in the case of a serious incident, other than death of a child, notification of a serious incident must be within 24 hrs of the incident or the time that the person becomes aware of the incident.

Regulation 12(e)(i) provides that the definition of a serious incident includes any circumstance where a child being educated and cared for by an education and care service appears to be missing or cannot be accounted for.

Decision

7. The Authority has considered all the information supplied by the Provider and is satisfied that, on 7 June 2021, inadequate supervision contributed to ██████ being able to abscond from the Service unwitnessed by educators, in contravention of section 165(1) of the *Law*.
8. The Authority is satisfied that the very nature of the Notification engages a contravention of section 165 of the *Law*, however, notes that the time that ██████ was unaccounted for appears to have only been approximately 5 minutes, and that educators were aware that he had gone missing and had started searching.
9. The Authority is satisfied that the Provider has not notified the Authority of a serious incident within the prescribed timeframe of 24 hours, which engages a contravention of sections 174(2)(a) and 174(4)(a) of the *Law*.
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 this Administrative decision.
11. In deciding if a compliance action should be taken, the Authority considered the following considerations:
 - a) That because of the incident, the Provider has advised of strategies that they have put in place to mitigate future risk of a similar incident occurring whilst also supporting ██████ needs.

- b) If the Provider ensures that [REDACTED] plans are followed at the Service, then risk of potential harm or hazard to [REDACTED] will be mitigated through better planning of supervision needs within the different environments he utilises and activities that he participates in.
- c) The compliance history of the Service, noting no contraventions of *Law* for any previous similar matters.

12. The Authority determined that strategies implemented to address supervision and support of [REDACTED] has met the expectations of the Authority. Due to this, the Authority will not be initiating statutory compliance action in this instance. However, the contravention has been recorded on the Service file and may be considered in the instance of any future similar incidents.

Legislation

- 13. The *Law* 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>.
- 14. 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>
- 15. Should you have any questions about this Decision please contact me at
Janine.fairburn@act.gov.au.

Yours Sincerely,



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

17 June 2021

CC'd: kate.marshall@ed.act.edu.au