

██████████
Person with Management or Control
Canberra Rudolf Steiner School Association Incorporated
RE: Orana Steiner School Early Childhood Centre and Kindergarten

Email: ██████████

Dear ██████████

Decision to issue Administrative Action RE: NOT-40913684

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-40913684) relating to Orana Steiner School Early Childhood Centre and Kindergarten SE-00009697 (the Service) operated by Canberra Rudolf Steiner School Association Incorporated PR-00005817 (the Provider).
2. The notification of incident advised that two children, aged 3 and 4 years, were missing and unaccounted for, after exiting the Service unnoticed by educators by crawling under a fence.
3. The Authority is satisfied that the Provider did not comply with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations (the Regulations)* in this instance. Web addresses to the Law and the Regulations are provided for your convenience at the end of this Decision.

Facts

4. On 18 October 2023, a notification of incident (NOT-40913684) was submitted to the Authority by the Provider advising that on 17 October 2023, two preschool aged children, ██████████ ██████████ were identified as missing from the Service, subsequently found by a parent. Refer NOT-40913684 at [Attachment A](#).

Law

5. The Notification and Notice engaged the following provisions of the Law:

Section 165(1) of 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.

Regulation 104(1) - Fencing

The approved provider of an education and care service must ensure that any outdoor space used by children at the education and care service premises is enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.

Penalty: \$2200.

Decision

6. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to substantiate an offence under section 165 of the *Law*, engaging an offence under section 167 of the *Law* in this instance.
7. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure adequate supervision at all times on 17 October 2023. This resulted in the two children being able to leave the Service unnoticed by educators.
8. 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, and by not having secure fence lines meeting the requirements of *Regulation 104*, the incident has further engaged a contravention of section 167(1) of the *Law*.
9. 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.
10. A Provider's obligations under sections 165(1) and 167(1) of the *Law* is positively and strongly framed – the Provider must always ensure adequate supervision, and 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 or illness. Adequate supervision is viewed as a reasonable precaution to be taken to protect children from harm and hazard likely to cause injury or illness.
11. Furthermore, it is considered a reasonable precaution to ensure that staffing and supervision levels always meet the emotional, developmental, and physiological needs of children and educators alike. 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.

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 you to achieve compliance and improve outcomes for children.
13. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the demonstrated 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 to address the non-compliances.
14. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular the obligation to ensure adequate supervision of children being educated and cared for by the Service, and that children being educated and cared for by a Service are protected from harms and hazards.
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* 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> . 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>.
17. 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

2 November 2023