

Ms [REDACTED]
Person with Management or Control
Communities@Work
RE: Communities@Work Mt Rogers Out of School Hours Care

Email: [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Administrative Action RE: NOT-40864142

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 Incident (NOT-40864142) relating to Communities@Work Mt Rogers Out of School Hours Care SE-00009695 (the Service) operated by Communities@Work PR-00005824 (the Provider).
2. The Notification related to a child, aged 5 years ([REDACTED]) exiting the Service unseen by educators.
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 *Regulations* are provided for your convenience at the end of this decision.

Facts

4. On 5 June 2023, the Authority received Notification of Incident (NOT-40864142) from the Provider. The Notification advised that, on 2 June 2023, an enrolled child, ([REDACTED] 5 years old), exited the service through a normally locked door (the bathroom connects the indoor and outdoor environments).
5. The Notification advised that ([REDACTED]) exited the service through a gate left open from the end of school routine. No staff observed him leaving, only during return as staff were moving to open the outdoor area and saw him returning through the open gate. Refer relevant records at Attachment A and B.

Law

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

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

Reasons

7. Upon considering all evidence for assessment, inclusive of Provider supplied information, the Authority is satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate an offence under sections 165 of the *Law* in this instance.
8. The Authority is satisfied that inadequate supervision contributed to [REDACTED] being able to leave the Service unnoticed by educators on 2 June 2023.
9. 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.
10. In determining this outcome, the Authority took into consideration the actions undertaken by the Provider at the time of the incident, actions advised of being undertaken via the notification, and the compliance history of the Service.
11. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of children and educators alike. These staffing and supervision levels may need to be adapted to protect children from harm and hazard likely to cause injury – both physically and psychologically.
12. Additionally, this decision is to remind the Provider to ensure that all policy, procedure and strategies implemented relating to supervision are communicated effectively to educators to ensure that all staff are aware of and understand the expectations of the Provider and the *Law* in regard to this.
13. The Authority notes that a similar matter occurred 18 May 2023, which resulted in an Administrative Decision being issued to the Provider on 6 June 2023. Please be aware that any further similar non-compliance occurs, the Authority may consider taking stronger actions to ensure compliance to the *Law* is occurring.
14. 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

15. 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>.
16. 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. If you have any questions in relation to this Decision, please contact Authorised Officer Janine Fairburn via email at Janine.fairburn@act.gov.au.

Yours Sincerely



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

23 June 2023