

[REDACTED]  
Person with Management or Control  
Guardian Corporate Early Learning Centres Pty Ltd  
RE: Guardian Childcare & Education Forrest

Email: [REDACTED]

Dear Ms [REDACTED]

**Decision to Issue Administrative Action RE: NOT-40940279**

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed the Notification of a child being left outside a closed door, unsupervised and unaccounted for (NOT-40940279) at Guardian Childcare & Education Forrest SE-40005756 (the Service) operated by Guardian Corporate Early Learning Centres Pty Ltd PR-0004736 (the Provider).
2. The notified incident 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 3 January 2024, the Authority received a Notification of Incident (NOT-40940279) from the Provider advising that a child was missing and unaccounted for, for around 7 minutes until the child was noticed standing outside the door to the classroom, but still located within the Service. Refer NOT-40940279 at [Attachment A](#).
5. On 9 January 2024, the Provider submitted further information in relation to the incident via the NQAITS Portal.

**Law**

6. The following provisions of the *Law* relevant to the notification assessment are:

**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.

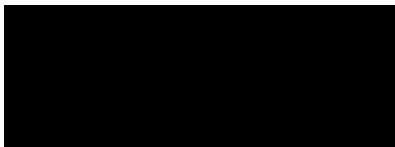
## **Reasons & Decision**

7. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, that on 3 January 2024, inadequate supervision contributed to a child being left outside a closed door, unsupervised and unaccounted for. Inability to ensure adequate supervision at all times engages a failure to take reasonable precautions to protect said child, from any harm and from hazard likely to cause injury.
8. The Authority is satisfied that these failures contributed to a child being left unattended for a period of time. The very nature of the Notification and accompanying documentation submitted by the Provider, support an offence under sections 165 (1) of the *Law* being substantiated.
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 the Provider in achieving compliance and improved outcomes for children.
10. When deciding what appropriate action to take, the Regulatory Authority took the following matters into consideration:
  - a) On its own merit, this matter was low-risk as the child was still located on the premises and found after 7 minutes;
  - b) That this is the third Notification that has been made to the Authority in relation to apparent inadequate supervision practices since 14 November 2023 and the trend of lower risk, supervision failings at the Service is of concern;
  - c) That the Provider appears to be monitoring the practices within the Service to ensure that adequate supervision practices are embedded in service delivery. This is exemplified by an email sent by yourself to Ms Fairburn on 14 February 2024 where you indicated that a Support Compliance Visit had been undertaken.
11. In this circumstance, the Authority has also considered the Service's compliance history and determined not to initiate statutory action but instead to issue this Administrative Decision, with no additional need for further action.
12. This Decision is intended to bring to your attention the need to ensure that the Provider meets its obligations under the *Law*, in particular to ensure every reasonable precaution is taken to ensure that all children are adequately supervised while in attendance at an early education and care service.
13. 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 similar breaches of the *Law* or *Regulations*.

**Legislation**

14. 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>.
15. 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>
16. If you have any questions in relation to this Decision, please contact Authorised Officer Nicole Withers by email at [nicole.withers@act.gov.au](mailto:nicole.withers@act.gov.au)

Yours sincerely



Nicole Withers  
Assistant Director (A/g)  
Children's Education and Care Assurance  
Education and Care, Regulation and Support  
ACT Education Directorate

15 February 2024