

██████████
Person with Management or Control
Community Services #1 Incorporated
RE: Forrest Early Education and Care Centre

Email: ██████████@communityservices1.org

Dear Ms ██████████

Decision to issue Administrative Action RE: NOT-00052949

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-00052949) relating to Forrest Early Education and Care Centre SE-00009775 (the Service) operated by Community Services #1 Incorporated PR-00005865 (the Provider).
2. The notification of incident advised that on 10 July 2024, ██████████ (1 yr) was given food containing her allergen (sesame), this triggered a mild allergic reaction.
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) in this instance. Web addresses to the Law and the associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

4. On 10 July 2024, a notification of incident (NOT-00052949) was submitted to the Authority by the Provider advising that on 10 July 2024, ██████████ (1 yr) was given hummus during mealtime (this contains sesame) as the cook misunderstood that hummus was allergen free. This then triggered a mild allergic reaction. Refer copy of the NOT-00052949 at Attachment A.
5. Additional information submitted with NOT-00052949 included the following:
 - Record of conversation – Internal investigation;
 - Parent discussion notes.
6. NOT-00052949 further advised that steps taken by the Provider to prevent or minimise a similar incident included:
 - Educators to check in with kitchen if no labels for allergen children present particularly if we have casual in kitchen.
 - Sign in kitchen if it states may contain or may be present it is unable to be used for allergen children.
 - Confirming casual orientation to ensure the understanding of allergens, intolerances and dietary requirements.

Law

7. The Notification engaged the following provisions of the *Law*:

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: \$11 400, in the case of an individual

\$57 400, in any other case.

Decision

8. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to support an offence under section 167 of the *Law* in this instance.
9. In relation to section 167 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure that all children were reasonably protected from harm (or hazard) while in the care of the Service on 10 July 2024.
10. The Authority is satisfied that the very nature of the matter notified, and additional information submitted by the Provider supports, on balance of probabilities, the offence being substantiated.
11. The Authority is satisfied that [REDACTED] was not reasonably protected from harm or hazard, due to exposure to an allergen by the Educators responsible for her education and care at the time.
12. As this is the third incident of an allergen being provided to a child by casual staff (within the last six months), the Authority would like to reiterate that all staff, even casual staff, need proper training to ensure safety for all children while they're in the care of the Service.
13. 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.
14. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the advised of steps taken by the Provider to mitigate risk of a similar occurrence, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliance.
15. This decision services to remind the Provider of their obligations and responsibilities under the *Law*, and to ensure that staffing and supervisory processes and educator practice is monitored regularly to ensure ongoing compliance with the *Law* and encourage continual improvements for outcomes for children.
16. 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

17. 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.cecqa.gov.au/national-law> , and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>.
1. Should you have any questions about this Decision please contact me at nicole.withers@act.gov.au.

Yours Sincerely,



Vittorio Colosimo
A/g Assistant Director Investigations
Regulation and Compliance
Education Directorate

2 September 2024