

██████████  
Person with Management and Control  
Wonderschool (Throsby) Pty Limited  
RE: Wonderschool Throsby

Email: ██████████@wonderschool.com.au  
Cc: ██████████@wonderschool.com.au

Dear ██████████

### Decision to Issue Administrative Action

1. As you may be aware, the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted enquiries relating to a Notification of Complaint (NOT-40545607) relating to the operation of Wonderschool Throsby SE-40017295 (the Service), operated by Wonderschool (Throsby) Pty Limited, PR-40019138 (the Provider).
2. The Authority is satisfied that the Service was not complying with the provisions of the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations 2011 (the Regulations)* in respect to operating and education and care service.
3. Web addresses to the Law and Regulations are provided for your convenience at the end of this Decision.

### Facts

4. On 7 June 2021, the Authority received a Notification of Complaint (NOT-40545607) submitted by the Provider. The Notification reported that the parent of a child, known to be ██████████ (aged 2 years old), raised allegations that ██████████ was inadequately supervised, and that medications were not stored or accounted for as per policy. Refer Notification at Attachment A.
5. On 8 June 2021, additional information was requested from the Provider. Additional information was submitted on 10 June 2021, and consisted of the following documents:
  - a) Cover Letter RE NOT-40545607;
  - b) Zip Folder containing all documentation outlined in the cover letter; and
  - c) Evidence to support why CCTV footage not available.Refer email correspondence and Cover Letter RE NOT-40545607 at Attachment B.

6. Additional information indicated that the parent's original allegation was received by the Provider on 19 May 2021, were investigated by the Provider, and then subsequently notified to the Authority on 7 June 2021.
7. Additional information indicated that the Provider identified failings in relation to ensuring that policy and procedure were followed regarding the correct storage of ████████ Ventolin inhaler and what documentation should have been kept with the medication. Refer Provider admissions via a copy of email at [Attachment C](#).
8. Additional information did not support a reasonable suspicion of inadequate supervision to meet a regulatory threshold for an offence in this instance.

## Law

9. Provisions of the *Law* and *Regulations* relevant to the assessment engaged the following:

**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.

**Regulation 170(1) – Policies and procedures to be followed**

The approved provider of a centre-based service must take reasonable steps to ensure that nominated supervisors and staff members of, and volunteers at, the service follow the policies and procedures required under Regulation 168.

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

An approved provider must notify the Regulatory Authority of any complaints alleging that this *Law* has been contravened.

**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)(b)** provides that in the case of a notice under section 174(2)(b), must be within 24 hrs of the complaint or incident.

## Reasons and Decision

10. The Authority has considered all the information supplied by the Provider and is satisfied that not every reasonable precaution was taken to protect children being educated and care for by the service from harm and from any hazard likely to cause injury in relation to how medication was stored, in contravention of section 167(1) of the *Law*.

11. The Authority is satisfied that the very nature of the admissions noted in Attachment C engages a contravention of section 167 of the *Law*, however, notes that the Provider has advised of immediate rectification measures undertaken via an audit of the risk minimisation and communication forms, and the allergy and medication record, to mitigate the chances of additional similar non compliances. Additionally, the Authority noted other strategies advised of to support and ensure educators following policy and procedures moving forward, as well as meeting Provider and family expectations in relation to building relationships, communication with families and education and care of all children.
12. The Authority is satisfied that the Provider has not notified the Authority of a complaint alleging that the *Law* had been contravened, within the prescribed timeframe of 24 hours, which engages a contravention of sections 174(2)(b)(ii) and 174(4)(a) of the *Law*.
13. Additional information submitted by the Provider identifies that the parent's original allegations regarding supervision and medication storage were received on 19 May 2021, yet the complaint was not notified to the Authority until 7 June 2021.
14. 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.
15. 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 complaint being raised.
  - b) If the Provider ensures that these strategies are implemented, and policy and procedure followed at the Service, then risk of potential harm or hazard to children will be mitigated through better accountability of medications and medication plans.
16. The Authority determined that strategies implemented to address non compliances 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**

17. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
18. The National Law is made up of an Act and Regulations which can be viewed at:
  - <http://www.acecqa.gov.au/national-law>, and
  - <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

19. Should you have any questions about this Decision please contact me on telephone (02) 6205 4390 or email [janine.fairburn@act.gov.au](mailto: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

18 June 2021