



Dear [REDACTED]

Decision to Issue Caution Letter

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, have recently conducted inquiries Regarding an allegation against you whilst employed at Wonderschool Throsby SE-40017295 (the Service) operated by Wonderschool (Throsby) Pty Limited PR-40019138 (the Provider).
2. It was alleged that, on 6 June 2023, you inappropriately disciplined two preschool children when employed as an educator at the Service.
3. Web addresses to the *Education and Care Services National Law (ACT)* (the Law), and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.

Facts

4. On 8 June 2023, the Authority received a notification from the Provider advising of an allegation that you used inappropriate restrictive practice with a child.
5. The Authority made further enquiries and obtained numerous documents from the Provider, including all documentation relating to the Provider's workplace investigation into the allegations raised against you.
6. A Show Cause Notice (the Notice) was sent to you via email on 29 September 2023. Refer Attachment A.
7. The Notice advised you that the Authority was considering compliance action based on a suspected contravention of the Law indicated by information produced by the Provider.
8. The Notice advised you of the allegations raised against you, as well as the evidence held by the Authority supporting the suspected offence of inappropriate discipline pursuant to section 166(3) of the Law.
9. On 13 October 2023, you advised the Authority that "the first email went into my spam". As such, on 16 October 2023, the Authority afforded you an extension to respond to the Notice until 29 October 2023. Refer correspondence of 16 October 2023 at Attachment B.

10. As of the date of this letter, the Authority has not received a response from you to either the Notice of 29 September 2023 or correspondence of 16 October 2023.
11. The Authority considered compliance action based on evidence that there has been a contravention of the *Law* identified during the Authority's enquiries into the matter.

Law

12. Evidence obtained during the Authority's enquiries engages section 166(3) of the *Law*, which provides as follows:

Section 166(3) of the *Law* - Offence to use inappropriate discipline

A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to—

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Decision and Reasons

13. The Authority has considered all evidence available and is satisfied, on the balance of probabilities, that you have contravened section 166(3) of the *Law*, as your conduct on Tuesday 6 June 2023 as described is determined as discipline that was unreasonable in the circumstances.
14. The Authority determined that the discipline was unreasonable in the circumstances because after you took ██████ down from the fort, you continued to carry him under your arm for a period that was longer than necessary and determined unreasonable under the circumstances to respond to the risk you stated he was posing to other children.
15. The Authority has the flexibility to choose the most appropriate action to support you to achieve compliance and improve outcomes for children. On this occasion, the Authority has considered that:
 - a. The child was not injured by your conduct;
 - b. You had submitted to the Provider a response, raising your version of events;
 - c. You did not respond to the Notice issued to you.
16. In the circumstances, the Authority has decided not to take statutory compliance action, but to issue you with a Caution Letter.
17. This Caution Letter serves to remind you of your obligations, as an educator, to ensure that your actions in no way compromise the safety, health and wellbeing of children being educated and cared for by yourself.
18. The Authority also strongly encourages you to seek further training in how to manage children's behavioural issues in an appropriate manner. To assist you in this, and to ensure that you are aware of and understand how inappropriate discipline is viewed within an

education and care setting, please find attached to this letter an ACECQA Fact Sheet on inappropriate discipline at Attachment C.

19. This letter will be recorded on our files and may be taken into consideration if any new evidence is received that warrants further investigation into this matter, or if any other matters involving your conduct with children are notified to the Authority in the future.

20. 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>

21. Should you have any questions about this Caution Letter please contact Authorised Officer Nicole Withers via email nicole.withers@act.gov.au

Yours Sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Early Childhood Policy and Regulation

29 November 2023