

██████████  
Person with Management or Control  
ACT Education Directorate  
RE: Throsby School – Preschool Unit

Email: ██████████

Dear ██████████

**Decision to issue Administrative Action RE: NOT-40958194**

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-40958194) relating to the operation of Throsby School – Preschool Unit SE-40022873 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
2. 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**

3. On 22 February 2024, the Provider submitted a notification of incident (NOT-40958194), to the Authority. NOT-40958194 advised, on 20 February 2024, a circumstance arose at the Service that posed a risk to the health, safety or wellbeing of a child or children attending the Service.
4. Additional documentation submitted with NOT-40958194 included Incident Reports and a Risk Assessment. The Incident reports identified that four children were found playing with paracetamol tablets. 7 tablets were popped out of a 10-tablet blister pack. One was left in the pack and two were unaccounted for. Refer copies of all submitted information at Attachment A.
5. On 23 February 2024, additional information was sought from the Provider in respect to the matter. The Provider responded 28 February 2024 with submission of the following:
  - a) Photos of preschool classroom and Mud Map;
  - b) Incident accounts from educators;
  - c) Risk prevention strategy;
  - d) Child Attendance records.

Refer copies of submitted additional information and correspondence at Attachment B.

**Law**

6. The Notification and Notice engaged the following provisions of the Law:

**Section 165(1) of 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: \$11 400, in the case of an individual

\$57 400, in any other case.

**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**

7. The Authority has considered all the information supplied by the Provider and is satisfied that there is sufficient evidence to substantiate an offence under section 165 of the *Law*, engaging an offence under section 167 of the *Law* in this instance.
8. In relation to section 165 of the *Law*, the Authority is satisfied, on the balance of probabilities, that the Provider did not ensure adequate supervision at all times on 20 February 2024. This resulted in preschool children being able to access and play with medications, unchallenged, with educators only appearing to become aware of the matter due to packaging and tablets being found on the floor.
9. Furthermore, the Authority is satisfied, on balance of probabilities, that the Provider failed to ensure all reasonable precautions were undertaken to protect children, by not ensuring adequate supervision of the children or have had educators confident in responding appropriately, in contravention of section 167(1).
10. The very nature of the incident, admissions to the incident occurring as detailed and the Provider's management of matter supports the contravention being determined. The Authority notes that there were no advised of emergency actions undertaken to ensure that if a child had / or was believed to have ingested the medication that medical advice was sought via the poison's hotline, or that parents were contacted and advised of the incident sooner to inform if they may have needed to seek any medical attention for their child.
11. The advised of strategy to mitigate risk advised of how educator personal belongings would be stored, yet it did not include strategies to address supervision practices or incident response and management should it be identified that a child may have ingested a medication not prescribed to them.

12. In addition, it was noted that no information was submitted to indicate exactly how the children gained access to the medications, and, if access was contributed to by educator neglect how the Provider has managed this failing with the educator to mitigate risk of a similar incident.
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 incident, the Authority has decided to issue this administrative action rather than statutory compliance actions to address the non-compliances.
15. Regarding the substantiated offences, the Authority requests that the following be submitted to demonstrate that the Provider has taken reasonable steps to mitigate risk of a similar incident occurring and improve quality of educator practice:
  - a) Evidence of any supervision and/or incident response and management training that has/is being undertaken by educators in response to this incident.
  - b) Any copies of meeting minutes and/or correspondence with parents relevant to this matter;
  - c) Procedure/Process for how educators respond to incidents of similar nature;
  - d) Evidence that staff personal belongings are locked away and keys are inaccessible to children; and
16. The Provider's response to the above is requested within 7 days of receipt of this decision via email to [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au). Alternatively, the Provider's response can be submitted via USB or hard copy to:

Children's Education and Care Assurance (CECA)  
Education and Care, Regulation and Support – Education Directorate  
ATT: Authorised Officer Janine Fairburn  
GPO Box 158,  
Canberra ACT 2601

17. This Decision is issued to remind the Provider, that always, staffing and supervision levels need to meet the emotional, developmental, and physiological needs of all children at all times. These staffing and supervision levels may need to be adapted to be above minimum regulated ratio levels to protect children from harm and hazard likely to cause injury – both physically and psychologically.
18. The substantiated contraventions have been recorded on your Service file and may be considered by the Authority in any future applications for approvals, amendments, or waivers. They may also be considered in determining the action to be taken, should further breaches of the *Law* or *Regulations* be substantiated.

**Legislation**

19. 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.acecqa.gov.au/national-law> , and <http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>.
20. Should you have any questions about this Decision please contact Assistant Director Janine Fairburn at [Janine.fairburn@act.gov.au](mailto:Janine.fairburn@act.gov.au).

Yours Sincerely,



Jo Williams  
Director  
Children's Education and Care Assurance  
Education and Care Regulation and Support

22 March 2024