

[REDACTED]
Person with Management or Control
Think Childcare Services Pty Ltd
RE: Nido Early School Franklin

Email: [REDACTED]
[REDACTED]

Dear [REDACTED]

Decision to issue Administrative Letter

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently investigated a complaint that the *Education and Care Services National Law (ACT) (the Law)* was contravened at Nido Early School Franklin SE-40015950 (the Service), operated by Think Childcare Services Pty Ltd PR-400000153 (the Provider).
2. Enquiries related to whether the Provider failed to adequately supervise children being educated and cared for by the Service between 19 May and 22 May 2020 and, consequently, failed to ensure that every precaution was taken to protect children from harm and hazard likely to cause injury.
3. I am satisfied that the Provider has not contravened the provisions of the *Law* but has breached provisions of the *Education and Care Services National Regulations 2011 (the Regulations)*.
4. Electronic links to the *Law* and *Regulations* are provided for your convenience at the end of this notice.

Facts

5. On 26 May 2020, the Authority received a complaint alleging that, during the period between 19 May to 22 May 2020 (inclusive), children being educated and cared for by the Service were not being adequately supervised, including an allegation that a child was left unsupervised in a cot room for a period of twenty-minutes.
6. During the investigation, witness statements obtained under section 215 of the *Law* did not support the allegations of inadequate supervision, inclusive of a child being left unsupervised in the cot room of the Service.
7. From documents supplied by the Provider on 3 July 2020, pursuant to a notice allowable under section 215 of the *Law* (215 Notice), the Authority conducted a ratio analysis on the whole of Service for the 19-22 May 2020. The analysis identified anomalies in staffing arrangements, supporting a suspicion of an offence under sections 169(1) engaging further suspected offences under sections 167(1) and 165(1) of the *Law*.
8. On 17 September 2020 a Show Cause Notice (the Notice) was issued to the Provider in relation to the ratio analysis. Refer Attachment A.

9. On 1 October 2020, the provider furnished a response to the Notice. Refer to Attachment B.

Law

10. Relevant legislative provisions engaged by the investigation and response to the Notice include the following:

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.

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: \$10 000, in the case of an individual
\$50 000, in any other case.

Section 169(1) of the *Law* - Offence relating to staffing arrangements

An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by a service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: \$10 000, in the case of an individual
\$50 000, in any other case.

Regulation 123(1) –Educator to child ratios – centre-based services

The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios -

- a) For children from birth to 24 months of age – 1 educator to 4 children;
- b) For children over 24 months and less than 36 months of age – 1 educator to 5 children;
- c) For children aged 36 months of age or over (not including children over preschool age) – 1 educator to 11 children;
- d) For children over preschool age in a jurisdiction, the relevant ratio (if any) set out in Chapter 7 for that jurisdiction.

Regulation 177– Prescribed enrolment and other documents to be kept by the approved Provider

- (1) For the purposes of section 175(1) of the law, the following documents are prescribed in relation to each education and care service operated by the approved provider-

(h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151

(2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Reasons

11. Upon considering all evidence gathered through the investigation, inclusive of the Provider's response to the Notice, the Authority is not satisfied, on the balance of probabilities, that there is sufficient evidence to substantiate that the Provider has contravened sections 165, 167 and 169 of the *Law* in this instance.
12. However, the Authority is satisfied that between 19 May 2020 and 21 May 2020 (inclusive), the Provider has failed to ensure prescribed documents were accurately kept, in contravention of *Regulation 177(2)*.
13. In deciding if compliance action should be taken, I have considered:
 - a. The measures taken by the Provider in response to COVID 19 epidemic.
 - b. The Provider has produced all requested documentation.
 - c. Statement supplied in the Providers response
 - d. The Authority acknowledged that an information error was made in section 11 of the Notice.

Decision

14. In deciding if compliance action should be taken, the Authority has taken into account that the substantiated contravention is of the *Regulations*, rather than the *Law*. The Authority has determined that no statutory compliance action is warranted to be taken against the Provider in this instance.
15. However, while the Authority acknowledge the difficulty with COVID-19 safe measures during the epidemic, this decision is intended to draw your attention to the need to ensure that all prescribed documents are maintained accurately at all times, and that processes are in place to monitor and ensure that staff are aware of the importance of completing records accurately.

Legislation

16. 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>.
17. 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>
18. This Decision will be recorded on your service 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 *Regulations* be found.

19. If you have any queries regarding this Decision, please contact Brian Cropper on (02) 620 71104 or alternatively via email at brian.cropper@act.gov.au

Yours sincerely



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

27 October 2020