

Mr [REDACTED]
Person with Management or Control
Extend (Australia) Pty Ltd
RE: Orana Steiner OSHC- Extend

Email: [REDACTED]@extend.com.au
Cc: [REDACTED]@extend.com.au

Dear Mr [REDACTED]

Decision to Issue Compliance Notice

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently conducted an Assessment and Rating visit on 18 and 20 September 2023. As a result, the Authority has decided to issue a Compliance Notice to Extend (Australia) Pty Ltd PR-00002530 (the Provider) regarding the operation of Orana Steiner School OSHC – Extend SE-00009696 (the Service).
2. During the visits the Authorised officers observed the following:
 - a) Inadequate staffing arrangements - educators educating and caring for children for the service did not meet the qualification requirements relevant to the educator’s role as prescribed by the Regulations;
 - b) Inadequate supervision- staffing arrangements were not supporting adequate supervision of all children in attendance at all times;
 - c) Reasonable precautions not undertaken to protect children from hazard and harms likely to cause injury or illness.
 - i. staffing arrangements were not meeting the needs of individual children, lack of process in place to ensure children preschool aged were supported; and
 - ii. the food provided was not stored correctly posing a risk from harm and hazard likely to cause injury.
 - d) A staff member implemented disciplinary action that was unreasonable in the circumstance.
3. I am satisfied that the Service was not complying with the provisions of the *Education and Care Services National Law Act (ACT) Act 2011 (the Law)* and the *Education and Care Services National Regulations 2011 (the Regulations)* in respect to operating and education and care service.
4. Electronic links to the *Law* and *Regulations* are provided for your convenience at the end of this Decision.

Background Facts

5. On the 18 September at 7:30am two Authorised Officers entered the service under Section 138 of the *Law* for the purpose of Assessment and Rating.

- (d) The templates shown to Authorised Officers during the visit were either incomplete or not filled out.
12. Displayed information identified ACT Education Directorate and did not record the contact details for the Regulatory Authority in contravention of Section 172(f) of the *Law*.

Grounds –Breaches of the Regulations

13. The Medical Conditions Policy was not being followed and in contravention of Regulation 170.
- (a) During the visit the Authorised Officer requested enrolment records. This was provided prior to the end of the visit. The enrolment record contained an action plan that was out of date and inconsistent with plans on display.
 - (b) Signatures and dates on Medical Management Plans were missing.
 - (c) Medication stored and held at the service identified as out-of-date.
 - (d) Medications were not stored as stipulated in accordance with the approved providers Medical Conditions Policy. The Medical Conditions Policy outlines that medication is to be stored in secure containers with the child's name clearly indicated, instead medication was stored in paper bags.
14. On reviewing the medication stored by the service medication was identified out of date and the procedure for administration of medication was not followed; in contravention of Regulation 95.
15. The Child Protection Policy (the Policy) made no reference to Childrens Youth Protection Services (ACT Child Protection Entity) nor does the Policy guide any obligations that nominated supervisors and staff members may have under specific child protection law in the Australian Capital Territory. Educators when questioned were unaware of their specific obligations as mandated reporters, engaging a contravention of Regulation 84.
16. Educators were observed not following health and hygiene practices the use of gloves was inconsistent and educators were not observed washing their hands. Educators were touching multiple surfaces, while serving food and meal prepping. Children were not encouraged to wash their hands with soap, wiping hands on clothing as the paper towel was positioned at a height inaccessible for many children. The soap was placed at a height inaccessible to younger children, engaging in a contravention of Regulation 77.
17. The following Policies were observed not followed during the visit engaging in contravention of Regulation 170.
- (a) Supervision Policy – Observations and evidence is outlined within section 8 of this correspondence, please re-read paragraph 8 in regard to the Supervision Policy not being followed.
 - (b) Sun Safety Policy – Children were observed not wearing hats and sunscreen was not encouraged for outdoor play.
 - (c) Anti bias and Inclusion Policy – children with inclusion needs are required to have an inclusion plan. During the visit, [REDACTED] was identified as having additional inclusion needs, with no documented supports in place.
 - (d) Relationships with Children Policy – An Educator who was familiar with the Service and the children enrolled as she had worked directly with children at the Service on

previous occasions prior to the visit and works as an assistant educator at the provider's other service located in the Australian Capital Territory. The educator was observed during the visit not encouraging children nor providing positive guidance and encouragement. The educator did not interact with a child once during the visit.

- (e) Medical Conditions Policy - Observations and evidence is outlined within paragraph 13 of this correspondence, please re-read section 8 in regard to the Medical Conditions Policy not being followed.
 - (f) Safe food handling Policy-Educators and children were observed engaging in unhygienic practices when handling food.
 - i. Educators were observed touching multiple surfaces while wearing the same gloves.
 - ii. Children were not encouraged to wash their hands prior to eating.
 - iii. The soap and paper towel were placed at a height that was inaccessible to younger children.
 - iv. The correct food safety practices were not implemented, food was not stored in an environment that keeps food safe.
12. Rosters are implemented for the purpose of Regulation 151; the roster was not updated to include the staff working directly with children in contravention of Regulation 177(2).
13. The physical environment identified furniture and equipment not kept in a manner to be safe, clean and in good repair, engaging a contravention of Regulation 103.
- (a) Cleaning checklists not filled out by the service. When asked to see a copy, the coordinator admitted they do not fill them out.
 - (b) Bathrooms identified as unclean, no cleaning checklists sighted, and spiders, cobwebs, wet flooring and dirty sinks were sighted.

Law

Legislative Provisions Relevant to Allegation

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 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 166(1) of the Law – Offence to use inappropriate discipline.

The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

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

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

\$50 000, in any other case

Section 169(2) of the Law – Offence relating to staffing arrangements.

An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

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

\$50 000, in any other case.

Section 172(f) of the Law – Offence to fail to display prescribed information.

An approved provider of an education and care service must ensure that the prescribed information about the following is positioned so that it is clearly visible to anyone from the main entrance to the education and care service premises—

- (a) the provider approval;
- (b) the service approval;
- (c) each nominated supervisor of the service;
- (d) the rating of the service;
- (e) any service waivers or temporary waivers held by the service;
- (f) any other prescribed matters.

Penalty: \$3000, in the case of an individual.

\$15 000, in any other case.

Regulations

Legislative Provisions Relevant to Allegation

95 Procedures for administration of medication

Subject to regulation 96, if medication is administered to a child being educated and cared for by an education and care service—

- (a) the medication must be administered—
 - i. if the medication has been prescribed by a registered medical practitioner, from its original container, bearing the original label with the name of the child to whom the medication is to be administered, and before the expiry or use by date; or
 - ii. from its original container, bearing the original label and instructions and before the expiry or use by date; and

- (b) the medication must be administered in accordance with any instructions—
 - i. attached to the medication; or
 - ii. any written or verbal instructions provided by a registered medical practitioner; and

84 Awareness of Child Protection Law

The approved provider of an education and care service must ensure that nominated supervisors and staff members at the service who work with children are advised of—

- (a) the existence and application of the current child protection law; and
- (b) any obligations that they may have under that law.

Penalty: \$1000.

77 Health, hygiene and safe food practices

(1) The approved provider of an education and care service must ensure that nominated supervisors and staff members of, and volunteers at, the service implement—

- (a) adequate health and hygiene practices; and
- (b) safe practices for handling, preparing and storing food—
to minimise risks to children being educated and cared for by the service.

Penalty: \$2000.

170 Policies and procedures to be followed.

(1) 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.

Penalty: \$1000.

177(2) Prescribed enrolment and other documents to be kept by approved provider.

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

Penalty: \$2000.

103 Premises, furniture and equipment to be safe, clean and in good repair.

(1) The approved provider of an education and care service must ensure that the education and care service premises and all equipment and furniture used in providing the education and care service are safe, clean and in good repair.

Penalty: \$2000.

Compliance History

- 21. In determining appropriate compliance action, I have considered the compliance history of the Service, which has had statutory compliance actions taken prior to this Decision.

Decision

- 22. Considering the evidence obtained, the Service’s compliance history, and the objectives and guiding principles of the *Law*, I have determined that issuing a compliance notice would be appropriate and in the best interests of children.
- 23. The Authority is empowered to issue a compliance notice under section 177 of the *Law*.

24. 177 – Compliance notices

- (1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.
- (2) The Regulatory Authority may give the approved provider a notice (a **compliance notice**) requiring the approved provider to take the steps specified in the notice to comply with that provision.
- (3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty: \$6 000, in the case of an individual
\$30 000, in any other case.

25. The compliance notice is Attachment A to this Decision letter. You are required to take the steps directed in the Notice to comply with the relevant provisions.
26. You must produce evidence of the steps required by **the time indicated within the Notice at Attachment B.**
27. The Authority will also be maintaining its auditing of the Service to ensure compliance is appropriately monitored, so as to ensure the health, safety and wellbeing of children being educated and cared for.

Rights of Review

28. A decision to issue a compliance notice is a **reviewable decision** as defined in Section 190 of the *Law*. Under section 191 of the *Law*, you may apply for an internal review of this decision. Any application must be lodged within 14 days after you are notified of the decision (or, if not notified, within 14 days after becoming aware of the decision).
29. An application for review may be made by completing the form AR01 Application for Internal Review of Reviewable Decision which can be obtained from the ACECQA website.

Legislation

30. 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>.
31. 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>
32. Should you have any questions about this Decision, or the Compliance Notice please contact Jo Williams by email at: jo.williams@act.gov.au.

Yours Sincerely



Jo Williams
Director
Education and Care Regulation and Support
ACT Education Directorate

12 October 2023