

Ms [REDACTED]  
Nominated Supervisor  
Extend (Australia) Pty Ltd  
RE: Orana Steiner School OSHC - Extend

Email: [REDACTED] [@extend.com.au](mailto:[REDACTED]@extend.com.au)

Dear Ms [REDACTED]

**Decision to Issue Formal Caution**

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance (CECA), through the assessment process and compliance and monitoring functions suspected offences relating to the operation of Orana Steiner School OSHC - Extend SE-00009696 (the Service) operated by Extend (Australia) Pty Ltd PR-00002630 (the Provider).
2. The Authority is satisfied that you, whilst in the capacity as the Nominated Supervisor of the Service, have contravened provisions of the *Education and Care Services National Law (ACT)* (the Law).
3. Web addresses to the Law and the *Education and Care Services National Regulations (the Regulations)* are provided for your convenience at the end of this decision.

**Facts**

4. On 18 and 20 September 2023, Authorised Officers attended the service for the purpose of conducting Assessment and Rating. Due to substantiated evidence, on the balance of probabilities, unmanaged risks, the Authority issued the Provider with a Compliance Notice specific to the non-compliance identified during the assessment visit.
5. The Provider responded via email on 26 October 2023.
6. The response did not address the non-compliance set-out within the Compliance Notice and the Provider was granted additional; 4 days to comply with the notice issued by the Authority.
7. The Provider emailed their response on 3 November 2023.
8. On 22 November 2023, Authorised Officers attended the Service for the purpose of conducting a Risk Audit.
9. The Risk Audit Identified non-compliances substantiated at this visit resulted. The Provider was issued an emergency action notice (EAN) due to the high risk to children engaged by the non-compliance observed on 22 November 2023.

10. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at the Service and a decision was made to monitor and assess suspected offences of inappropriate use of discipline, inadequate staffing and supervision, and failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.
11. On 27 November 2023, as a result of evidence gathered throughout the risk audit and through the Provider's response to the EAN that supported contraventions of the Law, the Authority sent you a Show Cause Notice (SCN). Refer copy of the Notice (minus attachments) at [Attachment A](#).
12. The SCN outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegation that, you, in the capacity of Nominated Supervisor, contravened section 165(2) of the Law, giving rise to a contravention of Section 167(2) of said Law.
13. In addition, the SCN outlined the compliance actions being considered by the Authority should the allegation be substantiated.
14. On 13 December 2023 you emailed the Authority your response to the SCN two days after the due date. Refer to a copy of your response (minus attachments) at [Attachment B](#).

#### **Allegation**

15. It is alleged that, on 18 and 20 September 2023, children being educated and cared for by the Service were not adequately supervised. Multiple exits were unsupervised, and all three educators were observed indoors at one time while children were outside.
16. In addition, it is alleged that, supervision was compromised due to children and parents using the outdoor play space.
17. It is alleged that, between 18-20 September 2023 and 23-27 November 2023, the Nominated Supervisor failed to ensure employees met qualification requirements prescribed by the Law for preschool aged children, in contravening section 169(4) engaging 167(2) of the Law.
18. It is alleged that, on 20 September 2023, a child was subjected to discipline that was unreasonable in the circumstances. A child known as [REDACTED] who is known to have a specific health care need and diagnosed [REDACTED], was disciplined by the way of having food withheld, contravening section 166(2) engaging 167 of the Law.
19. On 18, 20 September and 22 November 2023, children's enrolment records identified management plan were different to the plans displayed. Medical management plans were missing information or not in place at all and signatures were missing. Risk minimisation plans and communication plans were also not in place, in contravening section 167(2) of the Law.

## Law

20. The following provisions of the Law were engaged by the investigation and Decision.

### **Section 165(2) of the Law – Offence to inadequately supervise children**

A nominated supervisor 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

### **Section 167(2) of the Law - Offence relating to protection of children from harm and hazards**

A nominated supervisor 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.

## Evidence and Submission

21. The Authority's records indicated that you were the nominated supervisor of the Service at the relevant time.
22. In your written response, you advised as nominated supervisor that you take your role seriously and engage in continuous improvement.
23. You provided evidence that the service's supervision plan has been reviewed to be more effective after the visit. You also provide evidence that other strategies are in place to provide adequate supervision. As such, you provided a number of documents and evidence of measures put in place after the incident had occurred to mitigate the risk of a similar incident occurring in the future.
24. You made admissions that some medical management plans were not up to date, and that medical documentation is now in place for [REDACTED] and [REDACTED]
25. Under section 165(2) of the *Law*, it is a nominated supervisor's responsibility to ensure that children being educated and cared for by the service are adequately supervised at all times that that children are in the care of the service.
26. Under section 167(2) of the *Law*, it is a nominated supervisor's responsibility to ensure that every possible precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.
27. It is imperative that any person working in the early education and care sector, who accept the responsibilities of a nominated supervisor, are fully aware of their responsibilities and obligations, regardless of performing other roles, duties or when absent from the Service.

### Obligations upon Regulatory Authority

28. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely
- 'To ensure the safety, health and wellbeing of children attending education and care services; ...'*
29. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
- (a) that the rights and best interests of the child are paramount; ...
  - (f) that best practice is expected in the provision of education and care services.
30. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
- (c) to monitor and enforce compliance with this *Law*;
  - (d) to receive and investigate complaints arising under this *Law*.
31. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
32. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

### Decision

33. After careful consideration of your response and all available evidence, the Authority is satisfied that, on the balance of probabilities, there is sufficient evidence to substantiate a contravention of section 165(2) engaging s167(2) of the *Law* namely-
- a. Failing to 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, in contravention of section s165(2) of the *Law*.
  - b. Failing to take every reasonable precaution to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury on, in contravention of section 167(2) of the *Law*.
34. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and your actions taken to mitigate risk of re-occurrence of the incident, the Authority has decided to issue this Caution rather than statutory compliance action.

35. This Decision serves a reminder to you as a Nominated Supervisor of your obligations under the Law to ensure that all reasonable precautions are taken to ensure adequate supervision of children and that every reasonable precaution is taken to protect children when being educated and cared for. If there are any substantiated offences of a similar nature in the future the Regulatory Authority may consider further regulatory action to ensure compliance.
36. As a Nominated Supervisor, it is imperative to ensure that educators, at all times, are aware of and understand the policies, procedures and expectations of yourself and the Provider in relation to supervision of children, and in their roles of educating and caring for children.
37. Details of this decision will be recorded and may be considered should any further similar non-compliances be identified moving forward regarding your role as a Nominated Supervisor.

#### **Legislation**

38. 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>.
39. 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>
40. If you have any questions relating to this letter, please contact via email at [delphine.coutin@act.gov.au](mailto:delphine.coutin@act.gov.au) .

Yours sincerely



Delphine Coutin  
Assistant Director, Audit and Risk Management  
Children's Education and Care Assurance  
Education and Care Regulation and Support

23 January 2024