

[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently investigated an allegation that you inappropriately disciplined a child on 3 May 2021 at YMCA Early Learning Centre Belconnen SE- 00009860 (the Service), operated by Young Men’s Christian Association of Canberra Inc PR-00005888 (the Provider).
2. 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.
3. Should the allegation be substantiated, potential compliance actions include:
 - a. The Authority issuing you with an official caution,
 - b. An Enforceable Undertaking pursuant to section 179A of the Law.
 - c. A Prohibition Notice pursuant to section 182 of the Law,
4. I consider that your alleged conduct, if substantiated, may constitute inappropriate discipline, which is an offence under section 166(3) of the Law.
5. “Discipline” is any strategy employed by an educator with the intention of changing a child’s behaviour. Discipline that is inappropriate within the meaning of the Law includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Examples include yelling, physically dragging a child, unreasonable restraint of a child, using threatening or humiliating language, isolating, or shaming children.
6. This notice invites you to respond to the allegations before any determination is made.

Background

7. On 6 May 2021, the Authority was notified by the Provider of a complaint that, at approximately 4:10pm during the afternoon of 3 May 2021, you had roughly hit a child on the face while in the outdoor play area. The Provider advised that:

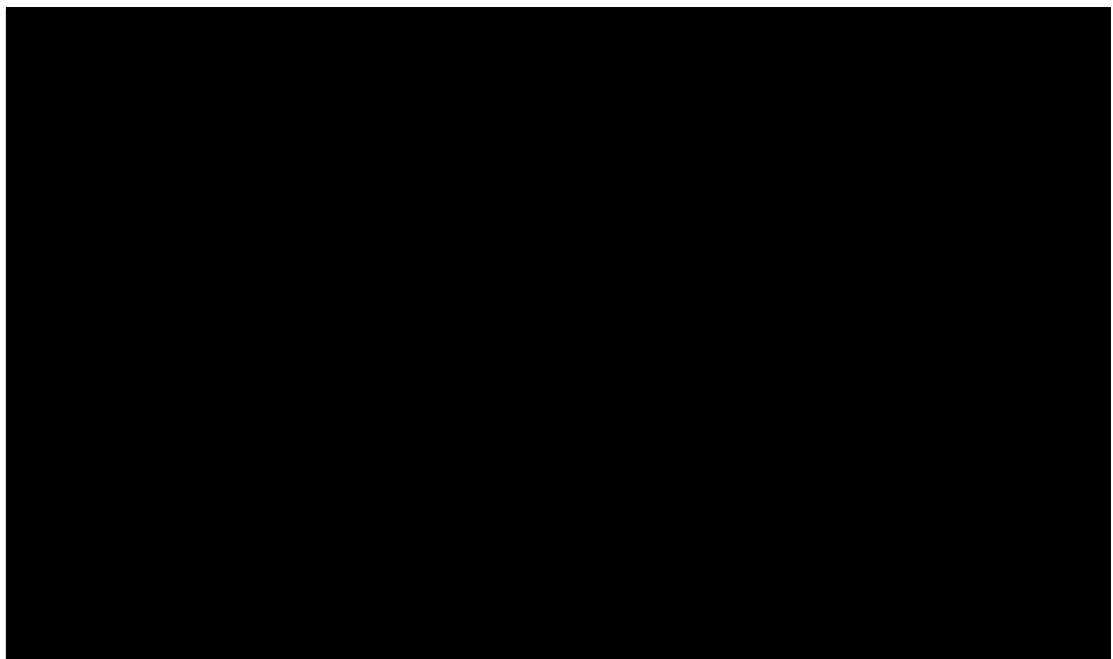
- a. the complaint was being investigated;
 - b. appropriate reports were being obtained from educators who had witnessed the incident; and
 - c. you had been suspended from your role pending the outcome of the investigation.
8. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to investigate the suspected offence.

Allegation of Inappropriate Discipline

9. It is alleged that, at approximately 4:10 pm while in the infants' outdoor play yard, you raised your voice, grabbing [REDACTED] [REDACTED] on the wrist and striking his face with an open palm, in contravention of section 166(3) of the Law.

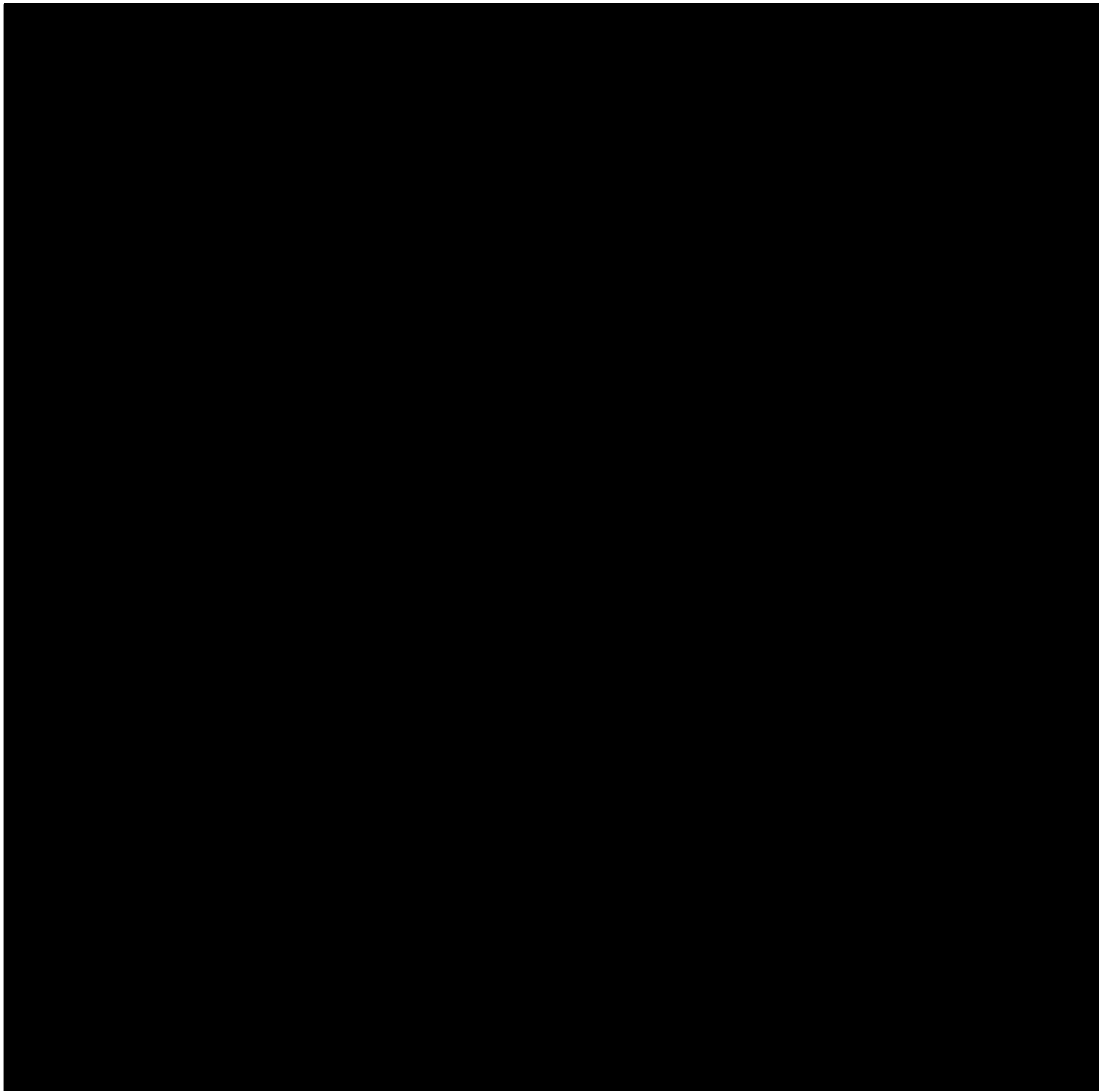
Evidence relevant to Allegation

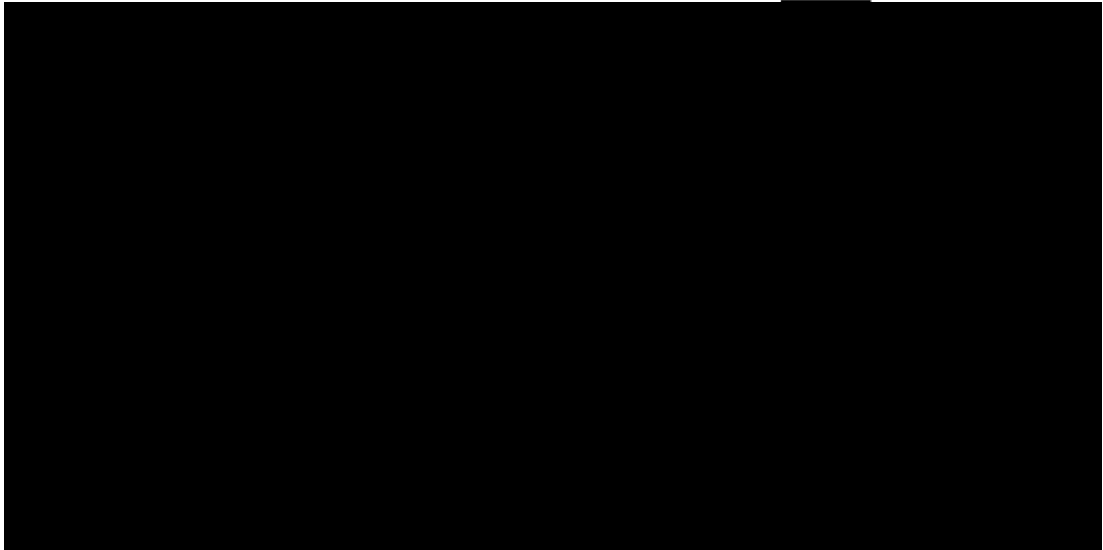
10. Evidence relevant to the Allegation obtained from the Provider included:
- a. Contemporaneous notes made by educators who witnessed the alleged incident (redacted where appropriate) (Attachment A);
 - b. Statements obtained by the Provider from educators who witnessed the alleged incident (redacted where appropriate) (Attachment B);
 - c. Your statement to [REDACTED] as part of the provider's internal investigation into the alleged incident (Attachment C);
11. During the investigation, the Authority obtained further statements from witnesses, relevant extracts from which appear below.
12. Relevant extracts from Witness A's statement are:





13. Relevant extracts from Witness B's statement are:





Contravention Supported by Allegation

14. The weight of evidence obtained by the Authority in relation to the Allegation supports a contravention of the following section of the *Law*:

Section 166(3) – Offence to Use Inappropriate Discipline

- (3) 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.

Potential Compliance Actions

15. Should the allegation be substantiated, the statutory compliance actions available to the Authority to consider include prohibition or an enforceable undertaking, as set out below:

Section 179A of the Law – Enforceable undertaking

- (1) This section applies-
- a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - b) in the circumstances set out in section 27(a), 72(a) or 184(3).
- (2) If subsection (1) (a) applies the Regulatory Authority may accept a written undertaking from the person under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.
- (4) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.

Section 182 of the Law – Grounds for giving prohibition notice

- (2) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed –
 - (a) to remain on the education and care service premises; or
 - (b) to provide education and care to children.
- (3) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following –
 - (a) an approved provider;
 - (b) a nominated supervisor;
 - (c) an educator;
 - (d) a family day care educator;
 - (e) an employee;
 - (f) a contractor;
 - (g) a volunteer;
 - (h) a person who was formerly a person referred to in paragraphs (a) to (g) in relation to the approved education and care service –or in any other capacity

Section 183 – Show cause notice to be given before prohibition notice

- (1) Before giving a prohibition notice, the Regulatory Authority must give the person a notice (a ***show cause notice***) –
 - (a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and
 - (b) stating the reasons for the proposed prohibition; and
 - (c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

Effect of an Enforceable Undertaking

16. Should a decision be made to offer you an enforceable undertaking, under section 179A of the *Law*, and you accept the undertaking, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

Effect of a Prohibition Notice

17. If, after considering all available evidence and any submission you wish to make, the Authority decides to issue a prohibition notice, while the prohibition notice is in force you must not:
 - (a) provide education and care to children for an education and care service; or
 - (b) be engaged as an educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or

18. carry out any other activity relating to education and care services.

Right of response

19. You have a right to respond to the allegations set out in this notice.

20. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if compliance action should be taken.

21. At Attachment D to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.

22. Please direct your written submission via email to Senior Investigator Jason Moore at Jason.Moore@act.gov.au or by post to:

Jason Moore
Senior Investigator
Children's Education and Care Assurance
GPO Box 158
CANBERRA ACT 2601

Caution

23. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.

Legislation

24. The *Law* applies to you as an educator and to any service you may be employed at.

25. 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>.

26. 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>

27. Should you have any questions about this Show Cause Notice please contact Jason Moore by email on jason.moore@act.gov.au.

Yours sincerely,



Clare Brookes
Senior Director
Children's Education and Care Assurance
Early Childhood Regulation
Education Directorate

13 July 2021