



Mr [REDACTED]  
Person with Management or Control  
ACT Education Directorate  
RE: Gold Creek School – Nicholls Preschool Unit

Email: [REDACTED]@act.gov.au  
[REDACTED]@act.gov.au

Dear Mr [REDACTED]

**Show Cause Notice – Proposed Compliance Action**

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance (CECA).
2. As you are aware, the Authority is the regulator of education and care services in the ACT and has the responsibility of monitoring and enforcing compliance with the *Education and Care Services National Law* (the Law). One of the Authority’s roles is to investigate suspected offences under the Law.
3. Authorised Officers are currently investigating multiple suspected offences at Gold Creek School – Nicholls Preschool Unit SE-00011215 (the Service) operated by ACT Education Directorate PR-00006465 (the Provider).
4. 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 notice.
5. Authorised Officers have obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences.
6. However, the Authority’s investigation is not complete until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority. This is the reason for sending this Show Cause Notice (Notice) to you. Detailed instructions of how to respond appear at the end of this Notice.
7. If substantiated, the allegations may constitute offences under sections 165, 167, and 174 of the Law and Regulation 177. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities (or any combination of them) it will need to consider whether compliance action is required.
8. Where offences under the Law are substantiated, the Authority considers many factors when determining appropriate action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Further details regarding potential compliance actions appear at the end of this Notice.

### **Grounds for issuing Show Cause Notice**

9. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas:
  - a. Supervision and protection of children from harms and hazards;
  - b. Failed to notify the regulatory authority to a complaint alleging the *Law* has been contravened; and Record-keeping.

### **Facts**

3. In March 2023, the Authority received a complaint alleging children were inadequately supervised on multiple occasions at the Service on 27 February 2023.
4. Due to the risk of harms and hazards likely to cause injury if children are inadequately supervised, the Authority determined to investigate suspected offences under section 165 and 167 of the *Law*.
5. Information received during the investigation provided reasonable grounds to suspect further additional offences under section 174 of the *Law* and *Regulation 177*.

### **First Set of grounds – Supervision and Protection from Harm**

#### **Allegation One**

6. It is alleged that on 27 February 2023, the Provider failed to ensure that all children being educated and care for by the service, were adequately supervised at all times, contravening section 165(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

#### **Legislation Relevant to Allegation One**

7. The following provisions of the *Law* are relevant to Allegations One:

#### **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.

Evidence relevant to Allegation One

8. Between 5 May 2023 and 8 June 2023, the Provider furnished documents and information pursuant to a notice issued under section 215 of the *Law* (215 Notice). Refer Attachment A for communication of submitted records.
9. Documents provided consisted of three zipped folders as follows:
  - a. Part 1 – evidence number 1-4: Staff records, child and educator attendance records;
  - b. Part 2 - evidence number 5-8: Induction records, Program for preschool rooms, map of service and supervision plans/staff roster; and
  - c. Part 3 - evidence number 9-12: Policies and Procedures, Concerns or complaints, Positive Behaviour Support plans, and Responsible person record.
10. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, witnesses are identifiable from the content of their evidence.
11. Please note that most witness statements were obtained utilising powers under section 215 of the *Law*, imposing an obligation to attend before the Authority and provide relevant evidence under questioning by an Authorised Officer. It is an offence to fail to comply.
12. Relevant extracts from Witness A's statement include:

[Redacted text block containing multiple paragraphs of evidence from Witness A's statement, with various sections obscured by grey and black bars.]

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[REDACTED]

[REDACTED]

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

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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14. Relevant extracts from Witness C's statement include:

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15. Relevant extracts from Witness D's statement include:

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16. Relevant extract from Provider’s supervision policy include:

*“Implement consistent supervision strategies and not perform other duties while responsible for the supervision of children.”*

Refer Attachment B for Supervision Policy and Procedure provided to the Authority by the Provider.

Contraventions Support Allegations

17. Evidence gathered appears to support contraventions of section 165(1) and 167(1) of the *Law*.

18. The Authority’s view is that ensuring adequate supervision at all times that children are being educated and cared for at the Service is a reasonable precaution to take to protect children from harm and from hazards likely to cause injury. Accordingly, a suspected contravention of section 165(1) engages an offence under section 167(1) of the *Law*.

## **Second set of grounds – Compliance with Law and Regulations**

### **Allegation Two**

19. It is alleged that by 2 March 2023, the Provider failed to notify the Regulatory Authority of a complaint alleging contravention of the *Law*, in contravention of section 174(2) of the *Law*.

### **Allegation Three.**

20. It is alleged that on 5 May 2023, the Provider failed to take reasonable steps to ensure prescribed records were accurate, in that, child attendance records were not kept in compliance with Government policy pursuant to *Regulation* 158(2) and therefore *Regulation* 158(1), contravention *Regulation* 177(2).

### **Legislation Relevant to Allegations Two and Three**

#### **Section 174 - Offence to fail to notify certain information to Regulatory Authority**

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider—

- (a) any serious incident at the approved education and care service;
- (b) any complaints alleging—
  - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
  - (ii) that this Law has been contravened;
- (c) information in respect of any other prescribed matters.  
Penalty: \$4000, in the case of an individual.  
\$20 000, in any other case.

- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed timeframe to –

- (a) The Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

#### **Regulation 176 – Time to notify certain information to Regulatory Authority.**

- (2) For the purposes of section 174(4) of the Law, a notice must be provided—

- (b) in case of a notice under section 174(2)(b) or a notice of a matter referred to in regulation 175(2)(b), within 24 hours of the complaint or incident

**Regulation 177 – Prescribed enrolment and other documents to be kept by 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 –
  - (b) An incident, injury, trauma and illness record as set out in regulation 87;
  - (k) A children’s attendance records as set out in regulation 158;
- (2) The approved provider of the education and care service must take all reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Penalty: \$2000
- (3) Subject to Subdivision 4, the approved provider of the education and care service must ensure that-
  - (a) Subject to sub regulation (4), the documents referred to in sub regulation (1) in relation to a child enrolled at the service are made available to a parent of the child on request.

**Regulation 158 – Children’s attendance record to be kept by provider**

- (1) The approved provider of an education and care service must ensure that a record of attendance is kept for the service that-
  - (a) Records the full name of each child attending the service; and
  - (b) Records the date and time each child arrives and departs; and
  - (c) Is signed by one of the following persons at the time that the child arrives and departs-
    - (i). The person who delivers the child to the education and care service premises or collects the child from the education and care service premises;
    - (ii). A nominated supervisor or an educator.
- (2) A preschool program provided by a school is not required to comply with sub-regulation (1) if it keeps attendance records in accordance with the education law, or Government education department policy, of the participating jurisdiction.

Evidence relevant to Allegation Two

21. The Authority does not have a record of the complaint, referred to at Attachment C, being notified in writing to the Authority.
22. The email correspondence indicates that supervision concerns/complaint were raised at the Service on 27 February 2023, and then referenced in writing on 28 February 2023.
23. The *Law* outlines inadequate supervision as an offence under section 165. Any concern/complaint raised regarding supervision being inadequate at any time that children were being educated and cared for would be alleging that the *Law* was being contravened.

### Evidence relevant to Allegation Three

24. On 5 May 2023, a response to the 215 Notice from the Provider was received by the Authority which included a Student Roll for the Service. There were no times included. Refer to Attachment D for copy of submitted Service's Student Roll.
25. Documents and communication records (Attachment A) support that child attendance records were not furnished in entirety by the Provider as required by the 215 Notice.
26. In response to Authority enquiries, the attached communication advised the Provider was exempt from Regulation 158(1) as the attendance records held by the Provider were compliant with ACT Education Directorate policy, as required by Regulation 158(2). Refer to email at Attachment E.
27. Section 33 of the *Education Act 2004* specify the following:

#### **s33 -Keeping records of enrolment and attendances for government schools**

- (1) The principal of a government school, or the person giving an approved educational course (government), must ensure that the following information is entered in the register of enrolments and attendances:
  - (a) the full name of each student enrolled at the school or course;
  - (b) a record of the attendance or nonattendance of the student at the school or course on every day when the school or course is open for attendance.

This section requires an attendance record to be kept. It is not prescriptive as to how details are recorded.

28. A search of the ACT Directorate policy website identified the ACT Public School Student Attendance and Roll Marking Procedure that outlines how Child Attendance records are to be kept in compliance with Section 33 of the *Education Act 2004*. The document outlines the following:

*4.1 Section 32 & 33 of the Act requires principals to maintain an accurate enrolment and attendance register which details the full name of every student and a record of their attendance/non-attendance.*

*4.2 Attendance data is recorded digitally in the School Administration System (SAS), the official register of enrolment and attendance. Where SAS is not accessible, paper records of attendance can be kept and SAS records can be updated when available.*

*4.5 School attendance records detail the time of arrival and departure each day and will clearly indicate whether a student is/is not physically present on the school grounds. A student's lack of participation in a class cannot be reflected on their attendance record. Any*

*concerns in relation to engagement should be addressed through school engagement support processes.*

*8.1. Under the Education and Care Services National Law (ACT) Act 2011 and the Education and Care Services National Regulations 2011 (Regulation 158), principals must comply with attendance and roll marking procedures.*

Refer to Attachment F for Student Attendance and Roll Marking Procedures.

29. Documentation and correspondence support that child attendance records, were not kept accurately in compliance with the Providers Attendance and Roll Marking policy pursuant to 158(2), or within the requirements of 158(1), of the *Regulations*.
30. On 8 June 2023 a response to further enquiries by the Authority identified the Provider is progressing further conversations and actions within the Directorate to gain access to a more detailed attendance summary and ensure compliance. Refer to Attachment G.

#### **Potential Compliance Action**

31. The Authority reiterates that no decision has been made at this time – this letter is a step in the investigation process. However, procedural fairness requires that the Authority take this opportunity to advise you of potential compliance actions if the offence is substantiated. Potential compliance actions include:
  - a. Non-statutory Administration Action (similar to a caution) with no further action;
  - b. Non-statutory Administrative Action with measures to be taken and evidence produced; or
  - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
  - d. Imposing of Conditions on the Service’s approval under section 51 of the *Law*.
  - e. Suspension of the service approval under section 72 of the *Law*. The suspension would be in effect from the time the provider has been notified of the decision until the provider can demonstrate that they have mitigated any future risks.
  - f. Cancellation of the service approval under section 79 of the *Law*.
32. In arriving at a decision concerning compliance action, if warranted, the Authority considers many factors, such as severity of non-compliance and the compliance history of the Provider and Service.
33. If a matter is determined as warranting consideration of suspension or cancellation of a service approval, please be aware that additional opportunity to respond to the grounds for such action would be provided, as required under sections 71 and 78 of the *Law*.

### **Right of response**

34. As mentioned previously, this is the Provider's opportunity to respond to the allegations and evidence set out in this Notice. You may, within 14 days of receiving this Notice, make a written submission for the Authority's consideration in deciding if any offences are substantiated and, if so, whether any compliance action should be taken.
35. At Attachment H to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email to [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au) or by post to:

Children's Education and Care Assurance (CECA)  
Education Directorate  
Attention: Vittorio Colosimo  
GPO Box 158, Canberra ACT 2601.

### **Caution**

36. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
37. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal. Please also be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
38. 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>.
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. Should you have any questions about this Show Cause Notice please contact Vittorio Colosimo on [Vittorio.Colosimo@act.gov.au](mailto:Vittorio.Colosimo@act.gov.au).

Yours Sincerely



Janine Fairburn  
Assistant Director  
Children's Education and Care Assurance  
Education and Care, Regulation and Support  
27 October 2023