

Ms [REDACTED]
Person with Management or Control
ACT Education Directorate
RE: Gordon Primary School Preschool Unit

Dear Ms [REDACTED]

SHOW CAUSE NOTICE – PROPOSED COMPLIANCE ACTION

1. Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, recently conducted an investigation into an allegation of inappropriate discipline on 4 May 2020 at Gordon Primary School – Preschool Unit, SE-00011193 (the Service) operated by ACT Education Directorate, PR-00006465 (the Provider).
2. Web addresses to the *Education and Care Services National Law Act (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. I am considering compliance action based on a suspected contravention of the Law supported by evidence gathered during the investigation regarding inappropriate discipline and failure to notify the Authority within regulated timeframes. As a delegate of the Authority, I am considering compliance action under Part 7 of the Law.

Grounds for issuing Show Cause for Compliance Action

4. The grounds for issuing this show cause notice arise via a Notification of Incident (NOT-40446918), to the Authority on 12 June 2020 by the Provider, regarding the conduct of [REDACTED] while employed as a Learning Support Assistant (LSA) at the Service. Refer copy of Notification at Attachment A
5. Furthermore, although the Provider was aware of the alleged conduct on or by the 6 May 2020, the Authority was not notified of the alleged conduct as required under the Law until notified by way of email on the 29 May 2020. Refer emailed notification at Attachment B
6. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to conduct an investigation.

7. I consider that the notified alleged conduct may constitute inappropriate discipline, which is an offence under section 166 of the *Law*.
8. "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, such as yelling, using threatening or humiliating language, isolating, or shaming children.

Allegation One - Fail to ensure child not subjected to Inappropriate Discipline

9. It is alleged that the Provider failed to ensure that a child, known to be [REDACTED] being educated and cared for by the Service was subjected to discipline, considered unreasonable in the circumstances, on 4 May 2020, by an educator known to be Mr [REDACTED]

Relevant Legislative Provisions

Section 166 (1) of the Law – Offence to Use Inappropriate Discipline

- 1) 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.

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

10. On 22 June 2020, the Authority issued the Provider a notice, allowable under section 215 of the *Law* (215 Notice), with a response received on 3 July 2020 inclusive of the following documents:
 - a) Educator staff records and Responsible person records;
 - b) Child attendance and Working Directly with Children (WDWC) records;
 - c) Relevant child enrolment records, policies and procedure; and
 - d) Documents and information relevant to the Provider's internal investigation into the alleged conduct.
11. During the investigation, the Authority conducted interviews with witnesses, with the relevant excerpts from statements included below:

12. Relevant excerpts from Witness A's statement are:



13. Relevant excerpts of Witness B's statement are:



14. In relation to the Provider's internal investigation into the matter, the Authority noted a handwritten letter by Mr [REDACTED] to the Provider advising the following:

- a) *"I witnessed a child throwing bark at a community worker. The community worker seemed to be struggling to get the child to stop. I walked over to help"*

- b) *"I asked the child to stop throwing bark at my friend. The child then started throwing bark at me. I told him it wasn't very nice and that he needed to come and sit down for 5 minutes"*
- c) *"I offered out my hand and asked the child to come with me. The child voluntarily took my hand and came with me. I took him up the stairs and to the chairs in front of the portable unit".*
- d) *"I asked the child to sit. He refused. I asked him several times and he continued to refuse. Told him he doesn't have to sit if he doesn't want to but, he won't be going back to play until he has sat down and then to say sorry to the community worker and myself. He still refused."*
- e) *"We were both up in front of the portable for about 20 – 25 minutes. During this time the child tried to leave. At this point, I was sitting down blocking his exit. I held my arms out and gripped the bars so that he couldn't go around me. The child tried to climb over the rail, and I told him that was an unsafe choice".*
- f) *"He came back down and tried to run past me again. I wouldn't move. Eventually he gave up and ran back in the opposite direction and stayed at the other side for a while. I gave him his space"*
- g) *"I spoke to another staff member and referred to the child as a stubborn little shit. I understand that this very unprofessional of me."*
- h) *"Wanted to help ensure that the child's behaviour was unacceptable here just as it would be in his usual school. I didn't want the child to think that it was OK for that to happen...."*
- i) *"But I would like to state that this was a very stressful time as this happened on a SSS site. I was the only staff member on class that was familiar with the environment. All of the staff were looking to me for guidance and I did not have my normal team to help me".*

Refer copy of handwritten response by [REDACTED] and obtained under 215 Notice on 3 July 2020, at Attachment C.

Contraventions Engaged by Allegation

15. Overall, evidence gathered relevant to the Allegation appears to support the following contraventions of the *Law* by the Provider:
- a) The fact that on 4 May 2020 an educator utilised a 'time out' process for 20-25 minutes for the purpose of discipline, and forced a child to be isolated, supports that the Provider has not ensured that no child being educated and cared for by the service is subjected to-
 - b) any form of corporal punishment; or
 - c) any discipline that is unreasonable in the circumstances.
- in contravention of section 166(1) of the *Law*, and engages an offence under section 167(1) of the *Law*

Allegation Two – Fail to notify Regulatory Authority

16. It is alleged that the Provider failed to notify the Regulatory Authority by, and after 6 May 2020 of a complaint alleging that the *Law* had been contravened, in that a child being educated and cared for by Service had been inappropriately disciplined.

Relevant Legislative Provisions

Section 174 (2)(c) and (4) of the *Law* - 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 –
- c) Any serious incident at the approved education and care service.
- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to-
- a) the Regulatory Authority that granted the Service approval for the education and care service to which the notice relates.

Regulation 175(2)(c) – Prescribed information to be notified to Regulatory Authority

- (2) For the purposes of section 174(2)(c) of the *Law*, the following matters are prescribed—
- c) Any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service.

Regulation 176(2)(c) – Time to notify certain information to Regulatory Authority

- (2) For the purposes of section 174(4) of the *Law*, a notice must be provided—
- c) In any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

(For clarification, ‘any other case’ constitutes a notification of a matter under Regulation 175(2)(c).)

Evidence relevant to the allegation

17. Documents furnished by the Provider, via email, notification via ACECQA Portal and under 215 Notice included the following:
- a) Relevant internal and notification emails dated 5 May 2020 to 29 May 2020 – Refer copies at Attachment B and D.
 - b) Notification of Incident (NOT-40446918), to the Authority on 12 June 2020 by the Provider - Refer copy of Notification at Attachment A
18. During the investigation, the Authority conducted interviews with witnesses, with the relevant excerpts from statements included below:

19. Relevant excerpts from Witness B statement:



Contravention Supported by Allegation Two

20. Overall, evidence gathered relevant to Allegation Two appears to support the following contraventions of the *Law* by the Provider:
- a) Failing to notify to the Authority a circumstance that posed a risk to the health, safety or wellbeing of [REDACTED] on 4 May 2020, within the regulated timeframe of 7 days, in contravention of section 174(2)(c) of the *Law*.

Proposed Compliance Actions

21. Should the allegation be substantiated, the statutory compliance actions available to the Authority to consider include a compliance notice, as set out below:

Section 177 of the *Law* - 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.

Right of response

22. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
23. At Attachment E to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
24. Please direct your written submission via email to Authorised Officer Brian Cropper at Brian.Cropper@act.gov.au or by post to:

Brian Cropper, Senior Investigator
Children's Education and Care Assurance
GPO Box 158, CANBERRA ACT 2601

Caution

25. 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 excerpt provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
26. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
27. 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.
28. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
29. 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>
30. Should you have any questions about this Show Cause Notice please contact Brian Cropper by telephone on (02) 620 71104 or email to brian.cropper@act.gov.au.

Yours sincerely,



Clare Brookes
Senior Director
Early Childhood Regulation
Education Directorate

17 September 2020