



Mr [REDACTED]
Learning Support Assistant

Dear Mr [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. Potential compliance actions include an enforceable undertaking pursuant to section 179A of the *Law*, and a Prohibition Notice pursuant to section 182 of the *Law*.

Background

4. The grounds for issuing this show cause notice arise from a complaint notified to the Authority on 12 June 2020 by the Provider (the Education Directorate) regarding your conduct, while employed as a Learning Support Assistant at the Service. Refer Attachment A
5. Due to the risk of harm to children when subjected to inappropriate discipline, the Authority determined to conduct an investigation.
6. I consider that your alleged conduct may constitute inappropriate discipline, which is an offence under the *Law*.
7. “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 of Inappropriate Discipline

8. It is alleged that, on 4 May 2020, at about midday, while at the outdoor play area at the Service, you removed a child, known to be [REDACTED] from the play area where he was allegedly throwing tanbark at staff. It is alleged that you then moved him to the veranda deck of a nearby building and prevented him from leaving while repeatedly requesting him to sit.

Evidence relevant to Allegation

9. Documents obtained pursuant to a notice allowable under section 215 of the Law (215 Notice) from the Provider included, but was not limited to, the following:
- a) Working Directly with Children records for the 4 May 2020;
 - b) Child attendance records for the Preschool Unit for the 4 May 2020; and
 - c) Your handwritten account of events in response to Provider enquiries.

Refer Attachment B for the relevant documentation, redacted where appropriate.

10. As part of the investigation, the Authority also conducted independent interviews with witnesses. The relevant excerpts from witness statements are included below.
11. Relevant excerpts from Witness A's statement are:



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





13. In relation to your handwritten response to the Provider, the Authority noted the following relevant excerpts:



Refer Attachment B for full copy of information relevant to your submissions to the Provider for the purpose of their internal investigation.

Contravention Supported by Allegation

14. The evidence obtained by the Authority supports a contravention of the following section of the *Law*:

Section 166(3) – Offence to Use Inappropriate Discipline

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 an enforceable undertaking and Prohibition, 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.
- 3) 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.

Effect of an Enforceable Undertaking

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.

Section 182 of the Law – Grounds for giving prohibition notice

- 1) 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.
- 2) 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 a Prohibition Notice

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
- c) carry out any other activity relating to education and care services.

Right of response

16. 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.
17. At Attachment C to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
18. 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

19. 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

20. The Law applies to you as an educator and to any approved service you may be employed at.
21. 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>.
22. 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>
23. 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