

Ms [REDACTED]
Person with Management or Control
Goodstart Early Learning Ltd
RE: Goodstart Early Learning Kingston

Email: [REDACTED]
CC: [REDACTED]

Dear Ms [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. As you may be aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance, recently assessed a notification of serious incident and a notified complaint alleging that the *Education and Care Services National Law (ACT)* (the *Law*) was contravened at Goodstart Early Learning Kingston SE-00009785 (the *Service*), operated by Goodstart Early Learning Ltd PR-00001129 (the *Provider*).
2. 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.
3. This show cause notice offers the Provider the opportunity to respond to the allegations prior to any determination being made.
4. If any or all of the allegations are substantiated, I will be considering compliance action based on suspected contraventions of the *Law* and the *Regulations* regarding failure to take reasonable precautions to protect children from harm and from hazards likely to cause injury, and failure to notify a serious incident to the Authority.
5. As a delegate of the Authority, I would be considering compliance action under Part 7 of the *Law*.

Grounds for issuing Show Cause for Compliance Action

6. The grounds for issuing this Show Cause Notice arise from multiple similar incidents relating to a child with known anaphylaxis, as outlined below.
 - a) On 17 September 2021, the Provider notified the Authority of a serious incident (NOT-40472450) involving [REDACTED] experiencing an allergic reaction to an unknown substance on 16 September 2021, resulting in administration of Areus and Epi-pen, ambulance transport and overnight admission to hospital.

Refer Attachment A for a copy of the notification documentation. Subsequent information received indicated that the reaction may potentially have been caused by [REDACTED] sitting next to a child who was eating dairy, and being unsupervised when an educator tended to another child;
 - b) On an unknown date (said in the complaint to be 23 June 2021 but referred to as “the second occasion), [REDACTED] apparently experienced a reaction whilst in the playground, with

unidentified cause (noting the parent's statement that [REDACTED] is anaphylactic to dairy and tree nuts only, and the Service is nut-free, but not dairy free). The reaction resulted in the child being collected and taken for urgent medical attention. The Authority notes that this incident, as described, was not notified to the Authority by the Provider;

- c) On 27 October 2021, the Provider notified the Authority of an incident (NOT-40587631) involving [REDACTED] being given a sour cream and chive rice cake/cracker on 26 October 2021. [REDACTED] father had just arrived at the Service when [REDACTED] commenced reacting to the allergen, which was identified by her sibling. It appears that [REDACTED] did not require medical attention on that occasion. Refer Attachment B for a copy of the notification and subsequent documentation provided;
 - d) On 1 December 2021, the Provider notified the Authority of a serious incident (NOT-40599118) involving [REDACTED] being given a lactose-free cheese sandwich on 30 November 2021, requiring administration of Epi-pen, ambulance transport and further adrenalin at hospital. Refer Attachment C for a copy of the notification and subsequent documentation provided.
7. On 3 December 2021, the Provider notified the Authority of a complaint that the *Law* was contravened in that [REDACTED] was exposed on multiple occasions to substances to which she is anaphylactic. Refer Attachment D for a copy of the notification and complaint.
8. The Authority is considering compliance action based on documentation produced by the Provider which indicates that there may have been contraventions of the *Law* and *Regulations*. Specifically, the evidence obtained during the investigation suggests two sets of grounds which engage offences under the *Law*.
9. The first set of grounds relates to reasonable precautions to protect a child from harm or hazard likely to cause injury. The second set of grounds relates to failure to notify the Authority of a prescribed matter.

First set of grounds –Protection from Harm

Allegation One

10. It is alleged that, on 23 June 2021, 16 September 2021, 26 October 2021 and 30 November 2021, the Provider failed to take reasonable precautions to protect children being educated and cared for by the Service) from harm or hazard likely to cause injury in that [REDACTED] Medical Condition Management Plan was not followed and [REDACTED] was provided with or exposed to known allergens, in contravention of section 167(1) of the *Law*.

Legislative Provisions Relevant to Allegation One

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 cared 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

11. Documentation provided with the notifications outlined above, in Attachments A, B, C and D support that [REDACTED] was exposed to dairy (to which [REDACTED] is anaphylactic) on at least two occasions, and potentially four, whilst being educated and cared for at the Service.
12. It is noted that, although the Anaphylaxis Action Plan and Medical Conditions Management Plan refer to confirmed allergens of tree nuts, peanuts, dairy, egg and soy milk, the Risk Minimisation Plan states that the cook is to ensure meals do not contain nuts and soy milk only, without reference to dairy.
13. Regarding the most recent incident on 30 November 2021, the centre cook, [REDACTED] had only been employed since 27 October 2021, stated that he did not read the ingredients and included lactose-free cheese in [REDACTED] sandwich. It is concerning to the Authority that the Provider has engaged a centre cook who appeared unaware of the distinction between “lactose free” and “dairy free”. It is further noted that he had not completed recent zero tolerance training.
14. The Authority notes the Provider’s enquiries into the incident of 30 November 2021 identified multiple failings of staff members in following required food preparation and service procedures.

Contravention Supported by Allegation One

13. Documentation provided appears to support the following contravention of the *Law* by the Provider:
 - a. on 23 June 2021, 16 September 2021, 26 October 2021 and 30 November 2021, the Provider failed to take reasonable precautions to protect children being educated and cared for by the Service) from harm or hazard likely to cause injury in that [REDACTED] Medical Condition Management Plan was not followed and [REDACTED] was provided with or exposed to known allergens, in contravention of section 167(1) of the *Law*.

Second Set of Grounds – Notification to Regulatory Authority

Allegation Two – Failure to notify Prescribed Matter

14. It is alleged that, in contravention of section 174 of the *Law*, the Provider has failed to notify prescribed matters to the Regulatory Authority, being a circumstance arising at the Service (on date unknown but potentially 23 June 2021), that posed a risk to the health, safety or wellbeing of a child or children attending the Service.

Legislative Provisions Relevant to Allegation Three

Section 174– Offence to fail to notify certain information to the 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) information in respect of any other prescribed matters.
- (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 – 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 – 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.

Evidence Relevant to Allegation Two

- 15. Documentation submitted in NOT-40600250 indicates that ██████ suffered an allergic reaction at the Service which warranted urgent attention and observation at a medical practice. The Authority considers this to be a circumstance arising at the Service that posed a risk to the health, safety or wellbeing of ██████
- 16. Examination of the Authority’s records confirms the incident was not notified to the Authority, and the Provider confirmed in NOT-40600250 that the incident was not notified.

Contravention Supported by Allegation Two

- 17. Documentation appears to support that, in contravention of section 174 of the *Law*, the Provider has failed to notify a prescribed matter to the Regulatory Authority, being circumstances arising at the Service on date unknown (but potentially 23 June 2021) that posed a risk to the health, safety or wellbeing of a child or children attending the Service.

Proposed Compliance Action

- 18. The Authority is proposing compliance action under Parts 3 or Part 7 of the *Law*, should the Authority find that any or both of the Allegations are substantiated on the balance of probabilities. Potential compliance actions include:
 - a. A Compliance Notice under section 177 of the *Law*; or
 - b. Non-statutory action.

Right of response

- 29. You have a right to respond to the allegations set out in this notice. You may, within 28 days of receiving this letter, make a written submission for the Authority’s consideration in deciding if a compliance action should be taken. Should you require additional time within which to respond, a formal application for extension should be directed to the contact officer.

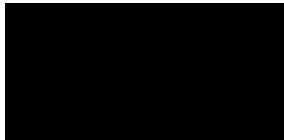
30. At Attachment E to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Please direct your written submission via email at Janine.Fairburn@act.gov.au or by post to:

Children's Education and Care Assurance
Attention Janine Fairburn
GPO Box 158
Canberra ACT 2601.

Caution

31. 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.
32. 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>.
33. 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>
34. Should you have any questions about this Show Cause Notice please contact Janine Fairburn on email Janine.Fairburn@act.gov.au.

Yours Sincerely



Jo Williams
Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

16 December 2021