

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

Email: [REDACTED]
CC: [REDACTED]

Dear Ms [REDACTED]

Decision to issue Administrative Action

1. As you may be aware, 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. The assessment of these notifications resulted in a Show Cause Notice (SCN) being sent to the Provider on 16 December 2021 – Refer copy of SCN at [Attachment A](#). (Attachments to the SCN have not been included for the purpose of this decision due to size, but can be provided again on request by the Provider)
3. Web addresses to the Law, and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this Decision.

Facts

4. On 16 December 2021, the Authority sent the Provider a SCN (Attachment A) for the purpose of affording the Provider the opportunity to respond to the outlined allegations prior to any determination being made. The SCN outlined the evidence obtained during the Authority's assessment and included provisions of the Law and Regulations
5. The grounds for issuing this SCN arose from multiple similar incidents relating to a child with known anaphylaxis. The allegations outlined for response were as follows:

Allegation One – Protection from Harm

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] [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.

Allegation Two – Failure to notify Prescribed Matter

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.

6. The SCN advised the Provider that the Authority was considering compliance action based on documentation produced by the Provider which indicated that there may have been contraventions of the *Law* and *Regulations*. Specifically, the evidence obtained during the investigation suggested two sets of grounds which engaged offences under the *Law*.
7. The first set of grounds related to reasonable precautions to protect a child from harm or hazard likely to cause injury. The second set of grounds related to failure to notify the Authority of a prescribed matter.
8. The Provider's response to the SCN was received by the Authority on 28 January 2022, noting that additional time was agreed to for response by 30 January 2022. Refer response and relevant correspondence received at [Attachment B](#).

Law

9. The following provisions of the *Law* were relevant to the assessment and SCN:

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.

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 the 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.

Reasons and Decision

10. The Authority has considered all the information supplied by the Provider and is satisfied, on the balance of probabilities, in respect to the matters raised relevant to Allegation One, the Provider has 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 and/or exposed to known allergens.
11. Noting that Provider's response to SCN (other than stating there was no exposure to known allergens on 16-9-20) was in relation to steps taken in reaction to the incidents. It was also noted that material produced indicated that the cook did not have adequate knowledge for the role, including being unaware of anaphylaxis and unaware of the difference between lactose free and dairy free even after having undergone recent training.
12. The Authority is satisfied that this lack of adequate knowledge by the cook, and the Provider (ultimately responsible under the *Law*) not ensuring that the cook was aware of and understood the severity of certain food allergies contributed to a child being able to ingest known allergens on multiple occasions. The very nature of the Notifications and SCN Response submitted by the Provider, support the offence under section 167(1) of the *Law* being substantiated.
13. In respect to Allegation Two, the Authority noted that there was no response by the Provider to address this allegation. The Authority is satisfied, on the balance of probabilities, that 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, substantiating a contravention of section 174 of the *Law*.
14. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. The Authority has the flexibility to choose the most appropriate action to support the Provider in achieving compliance and improved outcomes for children. The SCN advised the proposal of the following compliance actions should the allegations be substantiated:
 - a. A Compliance Notice under section 177 of the *Law*; or
 - b. Non-statutory action.
15. In this circumstance, the Authority has also considered the Service's compliance history, the age and potential risks associated to the child, and steps already undertaken by the Provider in this matter. The Authority determined, in this instance, not to initiate statutory action but instead to issue this Administrative Decision.

16. However, the Authority does have concerns in relation to how the Provider ensures that cooks and educators have appropriate knowledge around allergens and anaphylaxis.
17. Regarding the substantiated offence under section 167 of the *Law*, the Authority requires the Provider to produce the following:
 - a) evidence of how the Provider ensures that training undertaken by staff, specifically in relation to food allergies and intolerances, is understood at time of induction, and throughout their engagement.
 - b) evidence demonstrating that actions outlined in the Action Plans for the Centre Director and the Centre Cook have been performed
18. Evidence should be produced, within 21 days of receipt of this letter, to myself at janine.fairburn@act.gov.au.
19. This decision will be recorded on the Service's file and may be considered in any future applications for approvals, amendments, or waivers. This decision may also be considered in determining any future regulatory action, should there be future similar breaches of the *Law* or *Regulations*.

Legislation

20. The *Law* and *Regulations* 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>
21. 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>
22. Should you have any questions about this Decision please contact me at janine.fairburn@act.gov.au.

Yours Sincerely,



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

16 February 2022