



Person with Management or Control
Affinity Education Group Limited
RE: Kids Academy Symonston

Email: [Redacted]

Dear Ms [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. The Authority is currently investigating multiple suspected offences at Kids Academy Symonston - SE-40008980 (the Service) operated by Affinity Education Group Limited - PR-40001112 (the Provider). 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.
4. Authorised Officers have obtained evidence from other sources and the Authority has determined that the Provider has a case to answer regarding suspected offences. However, the investigation is not complete until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority.
5. 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.
6. If substantiated, the allegations may constitute offences under sections 166 and 167 of the *Law*. 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.
7. 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

8. Evidence obtained during the investigation to date supports offences under the *Law* within the following areas: Inappropriate discipline and protection from harms and hazards.

Facts

9. On 10 November 2023, the Authority received a notification of complaint (NOT-40922629) from the Provider, advising of an allegation that an educator inappropriately grabbed a child ([REDACTED]) Refer Attachment A.
10. On 21 November 2023, the Provider furnished the following upon request of the Authority:
 - a) Incident Investigation report
 - b) Timeline of events.Refer to Attachment B.
11. Due to the risk of harms and hazards likely to cause injury if children are subject to inappropriately interactions amounting to discipline, the Authority determined to investigate, engaging suspected offences under sections 166 and 167 of the *Law*.

Allegation

12. It is alleged that on 9 November 2023, the Provider failed to ensure that that no child being educated and cared for by the Service is subjected to conduct amounting to inappropriate discipline, unreasonable in the circumstances, in that a child, believed to be [REDACTED] (3:4), was grabbed by the arm by educator, [REDACTED] contravening s166(1) of the *Law* and raising a contravention of s167(1) of said *Law*.

Legislation Relevant to the Allegation

13. The following provisions of the *Law* are relevant to the Allegation:

Section 166(1) of the Law - Offence to use inappropriate discipline

The Approved Provider of an education and care service must ensure that no child being educated and cared for by a service is subjected to-

- a) Any form of corporal punishment ; or
- b) Any discipline that is unreasonable under the circumstances.

Penalty: \$11 400, in the case of an individual

\$57 400, 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: \$11 400, in the case of an individual

\$57 400, in any other case.

Regulation 155 provides that an approved provider must take reasonable steps to ensure that the education and care service provides education and care to children in a way that—

- (a) encourages the children to express themselves and their opinions; and
- (b) allows the children to undertake experiences that develop self-reliance and self-esteem; and
- (c) maintains at all times the dignity and rights of each child; and
- (d) gives each child positive guidance and encouragement toward acceptable behaviour; and
- (e) has regard to the family and cultural values, age, and physical and intellectual development and abilities of each child being educated and cared for by the service.

Evidence relevant to the Allegation

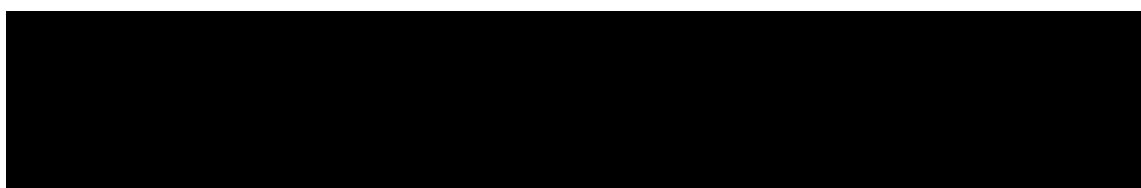
14. On 22 January 2024, the Provider furnished documents pursuant to a notice, issued 11 January 2024, allowable under section 215 of the Law (215 Notice). Relevant documents include:
- a) Child attendance records
 - b) Working directly with children records (WDWC)
 - c) Internal investigation.
 - d) Personnel file ([REDACTED])

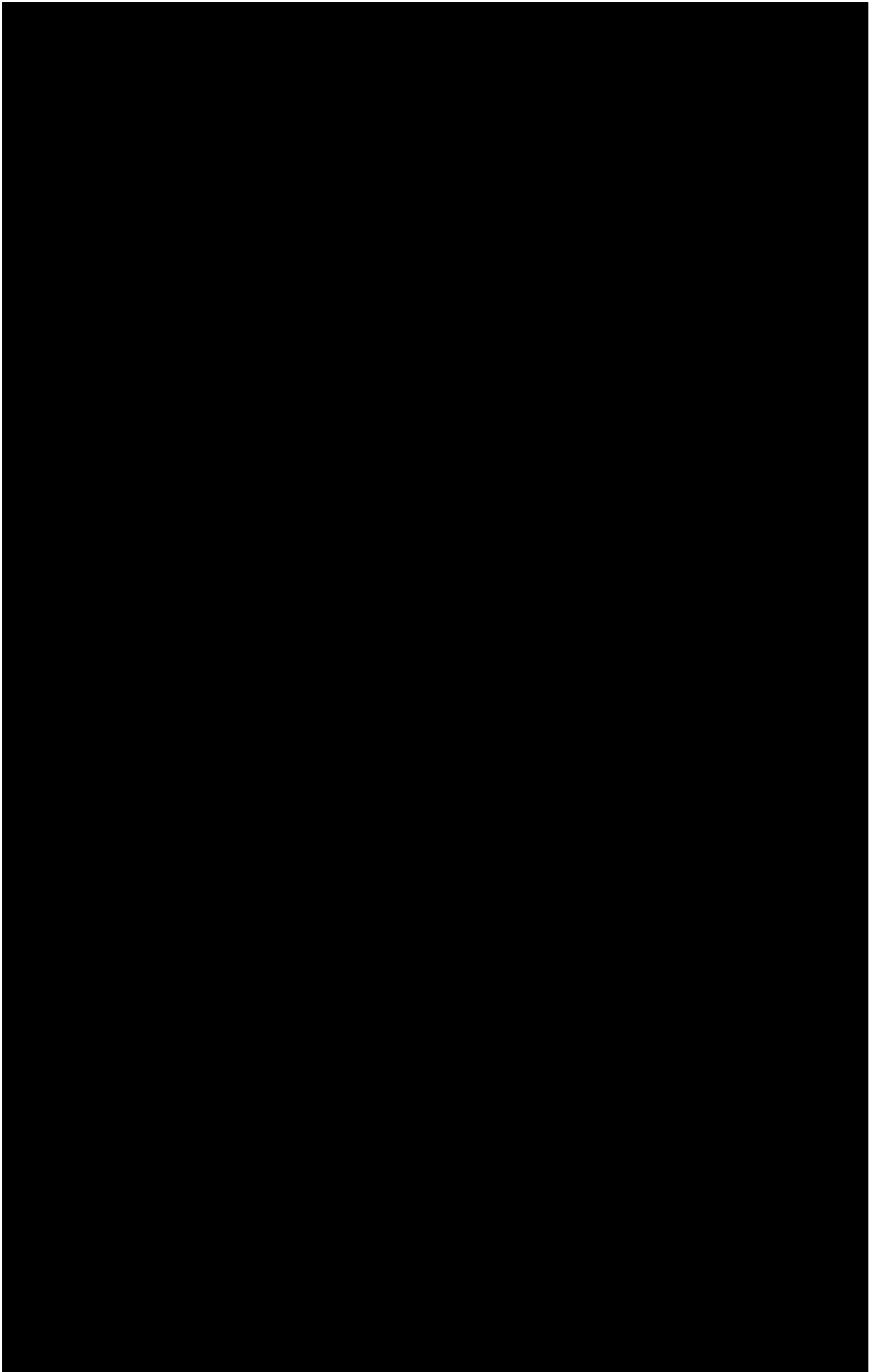
Refer to Attachment C.

15. On 30 January 2024, the Provider furnished further documents and information, not included in the 215 response of 22 January 2024. These documents and information include:
- a) Electronic Record of interview (ROI) and transcript dated 23.11.2023.
 - b) Ms [REDACTED] email dated 21.11.2023.
 - c) Ms [REDACTED] interview 23.11.2023.
 - d) Copy of Ms [REDACTED] email.
 - e) Copy of Ms [REDACTED] emails.

Refer Attachment D for documents (Electronic ROI can be supplied upon request).

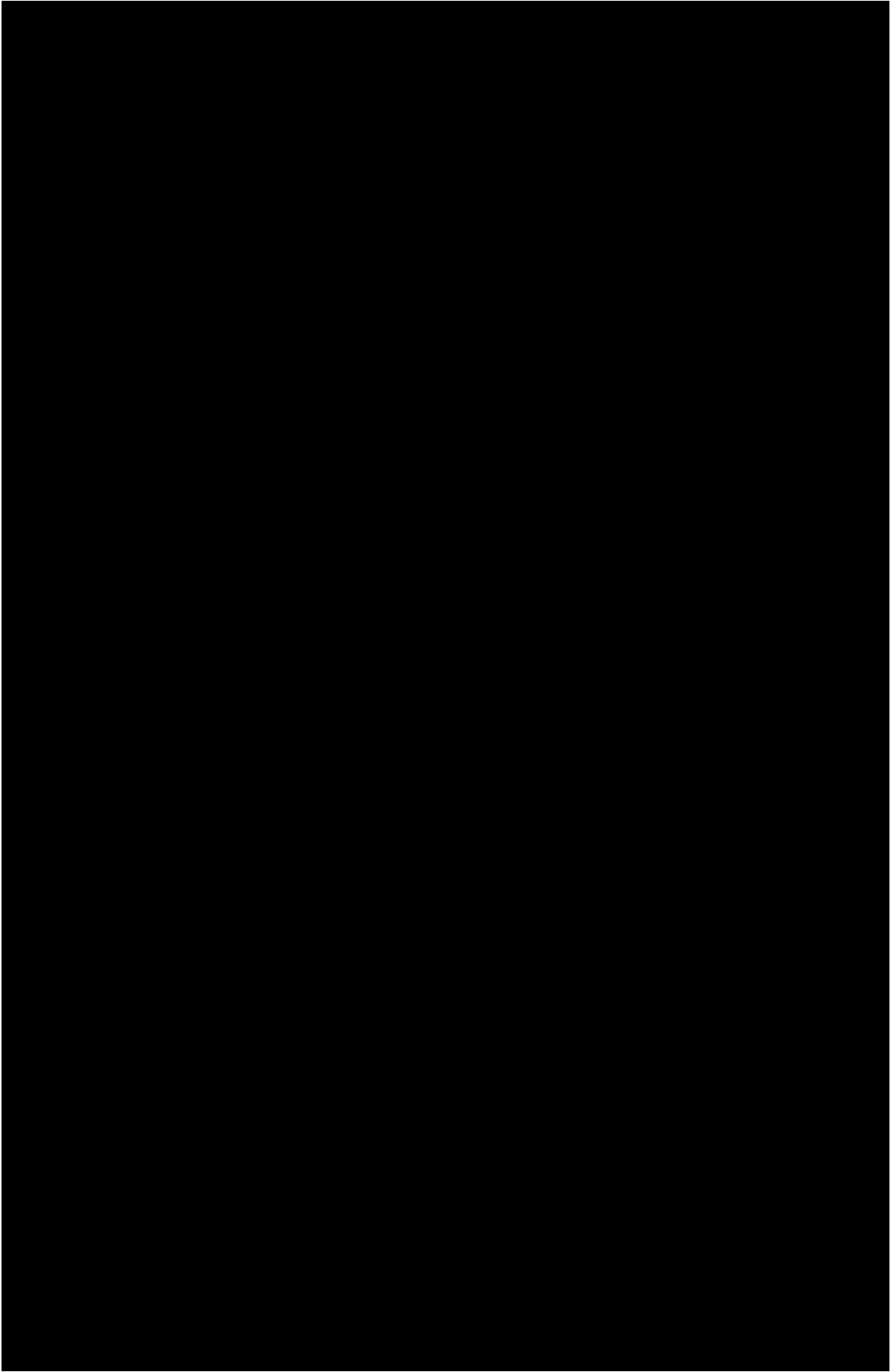
16. During the investigation, the Authority obtained witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, the witnesses are identifiable from the content of their evidence.
17. Please note that educator 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.
18. Witness A gives direct statement evidence of an educator, [REDACTED] grabbing child, [REDACTED] by the arm. Relevant extracts from that statement include:



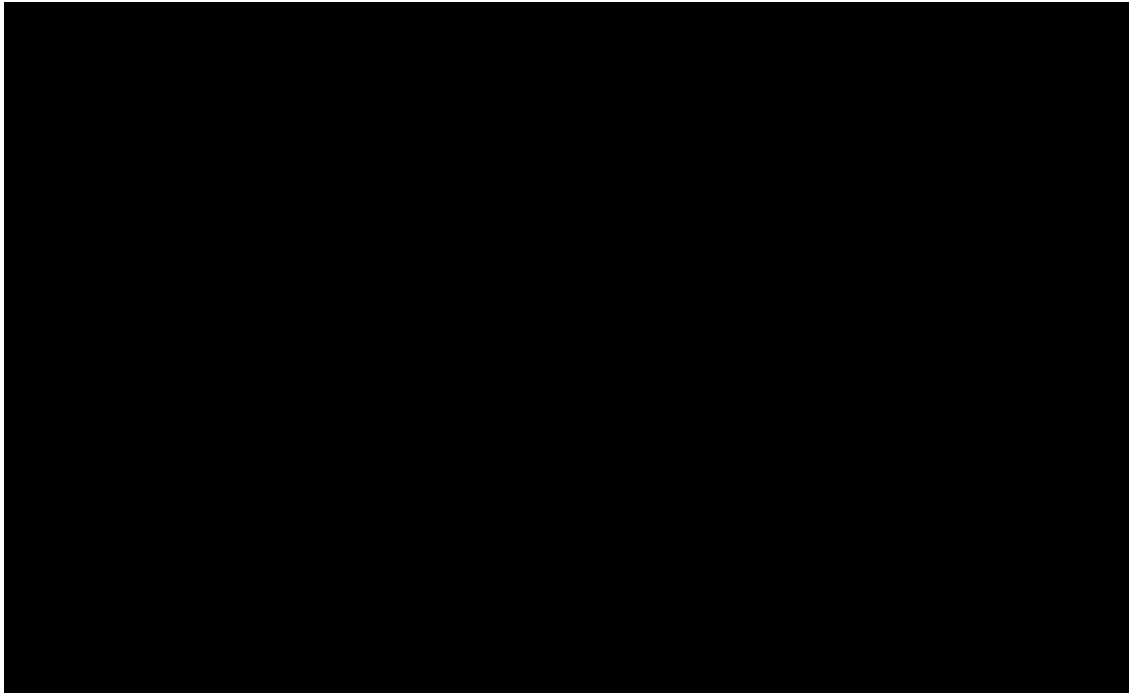


- [REDACTED]
19. Witness B gives direct statement evidence of educator [REDACTED] grabbing child, [REDACTED] by the arm at a slippery-dip and, later, during a disagreement with child over a blue car. Relevant extracts from that statement include:

[REDACTED]

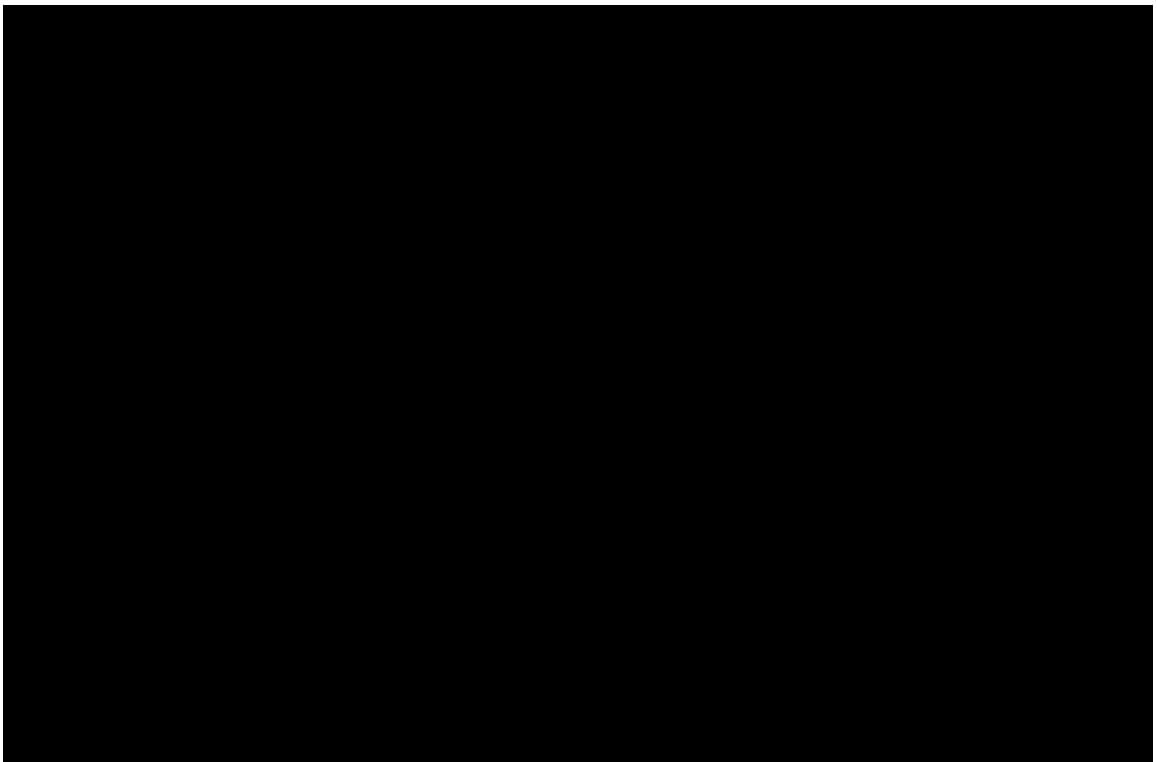


20. Witness C gives direct statement evidence of the exchange between parent and educator, [REDACTED] Relevant excerpts include:



21. Investigation documents furnished by the Provider include an Incident Investigation Form that list Ms [REDACTED] as a witness, who provides an email in support of Mr [REDACTED]. There appears no exploration of this version of events by the Provider to confirm as the same incident. Refer Attachment B for forms and Attachment D for email.

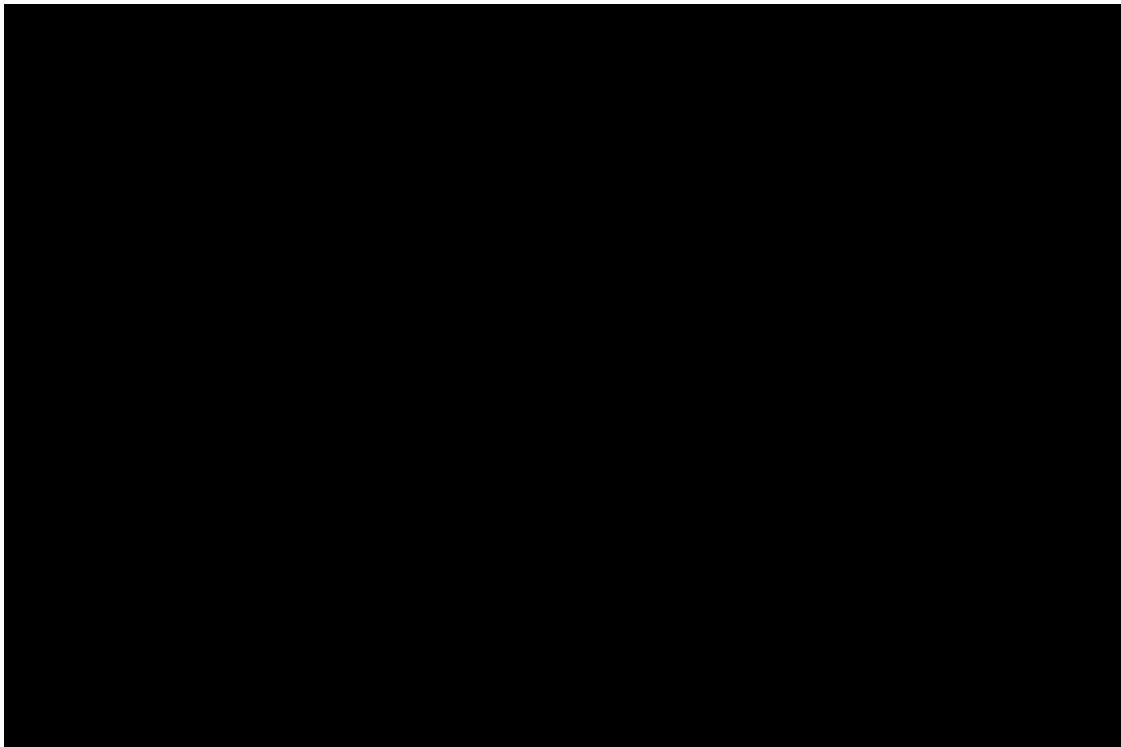
22. There is no confirmation that Witness D has viewed the same interaction as Witness A, B or C. Relevant excerpts include:

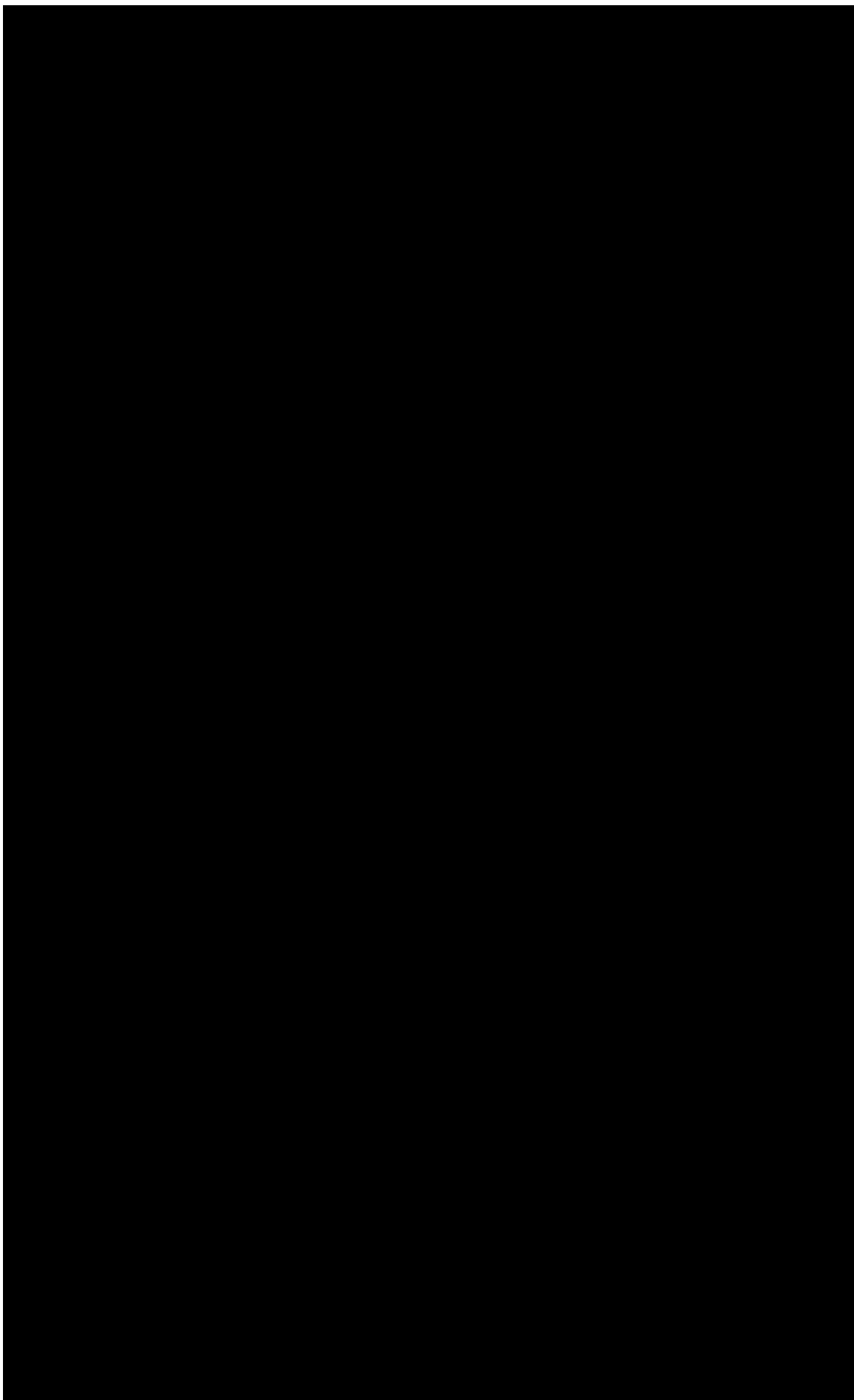


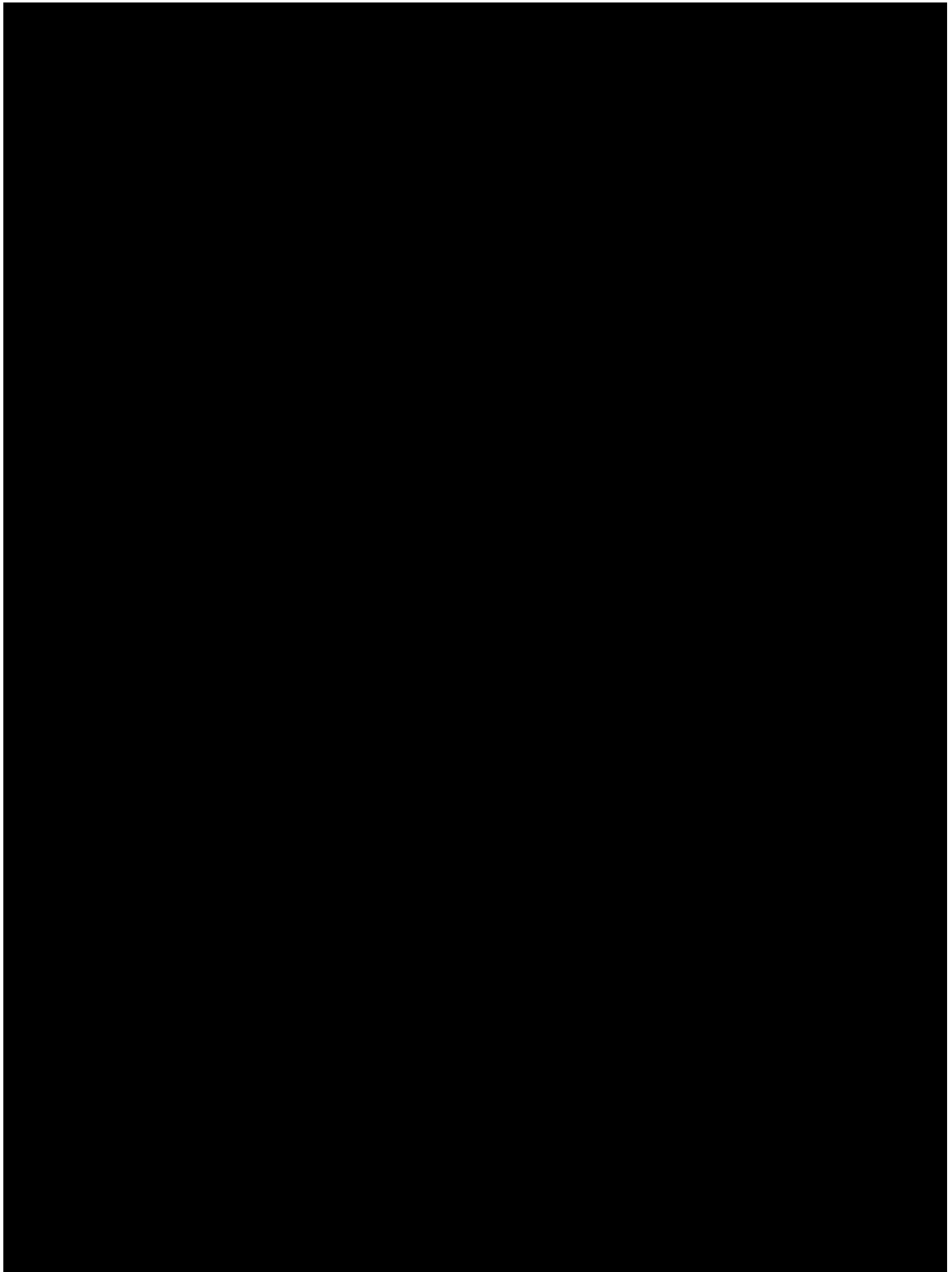


23. An electronic interview (ROI) conducted by Provider on 23 November 2023 with [REDACTED] [REDACTED] records the following admissions:
- a) Was working at the Service on 9 November 2023.
 - b) About 5.30pm the afternoon, children were sitting on a matt.
 - c) Interacted with child, [REDACTED] and boys regarding a blue car.
 - d) Took the blue car from child, [REDACTED]
 - e) Grabbed [REDACTED]
 - f) Was confronted by [REDACTED] mother about grabbing [REDACTED]

24. Relevant extracts from Mr [REDACTED] ROI include:







Refer ROI at Attachment D.

Contraventions supported by evidence.

25. Evidence gathered appears to support that [REDACTED] was subjected to conduct amounting to discipline that was unreasonable in the circumstances, in that, she was grabbed by the arm by [REDACTED] at the slippery slide, and again grabbed by the arm while on the matt,

contravening section 166(1) of the *Law*, and giving rise to a contravention of 167(1) of said *Law*.

26. Ensuring that no child is subjected to corporal punishment, or discipline unreasonable in the circumstances, is viewed as being a reasonable precaution to take to protect children from harm likely to cause injury.

Potential Compliance Action

27. 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 an 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*.
28. 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.
29. 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

30. 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.
31. 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 to Brian.Cropper@act.gov.au or by post to:

Children’s Education and Care Assurance (CECA)

Education Directorate
Attention: Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

32. 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*.
33. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
34. 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.
35. 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>.
36. 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>
37. Should you have any questions about this Show Cause Notice please contact Brian Cropper on Brian.Cropper@act.gov.au.

Yours Sincerely



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

09 April 2024