



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. 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.
5. 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.
6. 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

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

Facts

8. On 11 September 2023, the Authority received a notification of incident (NOT-40900832) from the Provider, advising of an allegation that an educator [REDACTED] had inappropriately interacted with a child [REDACTED] on 18 August 2023. Refer Attachment A.
9. Accompanying the notification was a standdown letter for the accused educator and meeting invite. Refer to Attachment B.
10. 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*.

Grounds for notice

Allegation

11. It is alleged that during July 2023, the Provider, failed to ensure that no child was subjected to corporal punishment, or discipline that is unreasonable in the circumstances, in that educator, [REDACTED], tied the hands of a child, believed to be [REDACTED] (4:1), to teach him not to put his hands down his pants, contravening section 166(1) of the *Law* and giving rise to a contravention of section 167(1) of said *Law*.

Legislation Relevant to the Allegation One and Two

12. 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: \$10 000, in the case of an individual

\$50 000, 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: \$10 000, in the case of an individual
\$50 000, 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

13. On 31 October 2023, the Provider furnished documents pursuant to a notice issued by the Authority under section 215 of the *Law* (215 notice). Relevant documents include:

- a) Responsible person records.
- b) Working directly with children records.
- c) Child attendance records.
- d) Policy and procedures.
- e) Internal investigation documents.

Refer Attachment C for relevant documents.

14. Documentation furnished by Provider identify the following:

- a) Ms [REDACTED] was a lead educator and occasional responsible person at the Service.
- b) An undated and unsigned file note believed to be completed by Ms [REDACTED] makes admissions to tying [REDACTED] hands together with a smock, in an attempt to change his behaviour and stop him from placing his hands down his pants.
- c) There is no evidence of a positive behaviour support plan for [REDACTED] or the restrictive practice was authorised.

15. On 13 December 2023, Provider furnished audio records of interview (ROI), pursuant to 215 Notice, with witness educator, Ms [REDACTED] and accused educator, Ms [REDACTED] [REDACTED] Refer to audio transcripts at Attachment D (Audio files can be provided upon request).

16. Ms [REDACTED] in her ROI admits to the following:

- a) Wrapping the hands of child, [REDACTED]
- b) They were not tied for long.

- c) Used a smock to wrap [REDACTED] hands.
- d) The wrapping was loose, and [REDACTED] freed himself.
- e) It was done to teach him not to put his hands down his pants.

17. Witness, Ms [REDACTED] in her ROI advise the following:

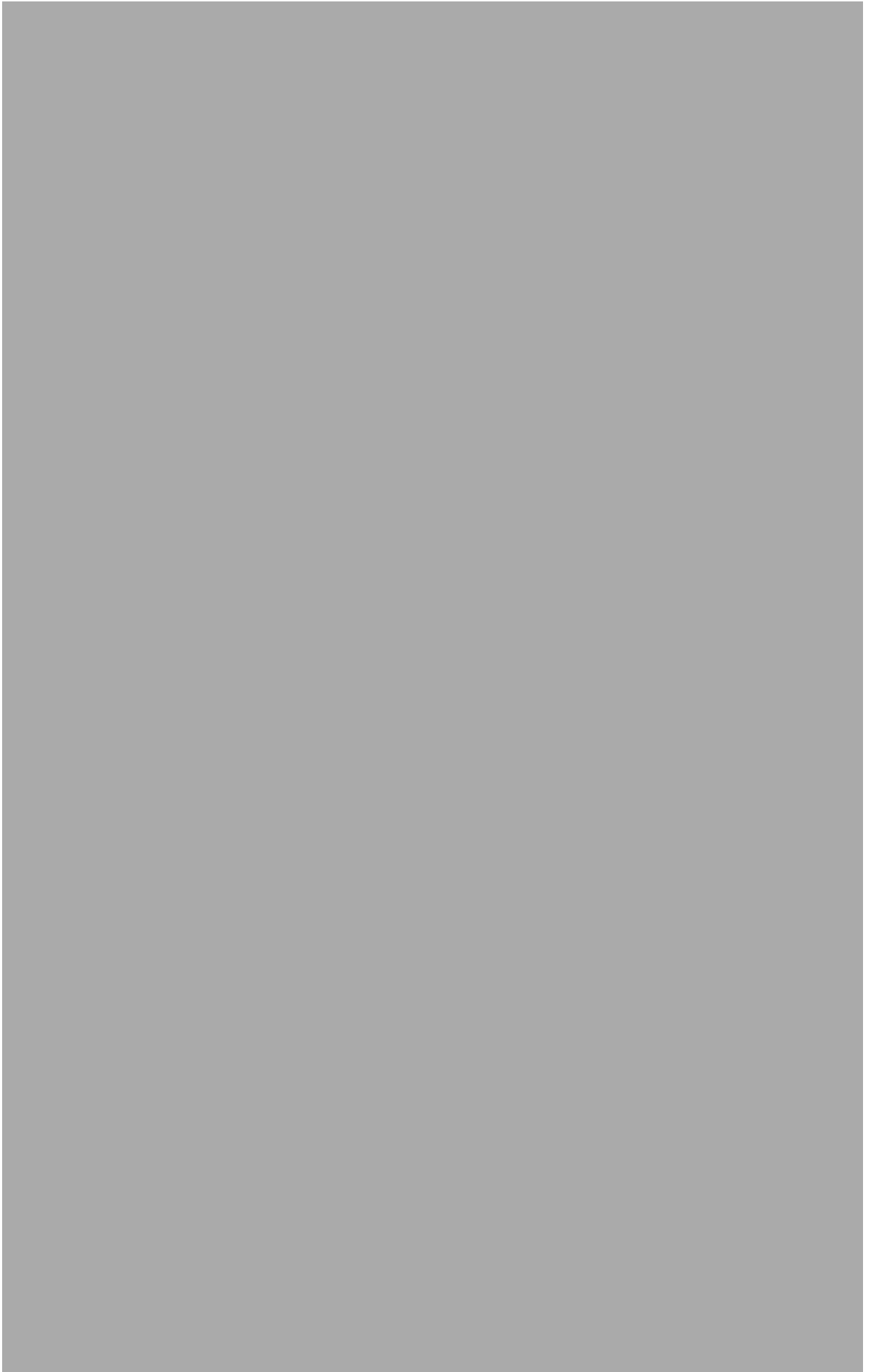
- a) Ms [REDACTED] used a smock to tie hands of child, [REDACTED]
- b) He was tied for two to five minutes.
- c) A timer was placed in front of him.
- d) [REDACTED] was crying and upset at having hands tied.

18. During the investigation, the Authority obtained a witness statement, relevant extracts from which appear below, with personal information redacted where appropriate. Due to the specific circumstances surrounding the alleged offences, the witness is identifiable from the content of their evidence.

19. Please note that educator witness statement was 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.

Relevant extracts from Witness A's statement include:







Contraventions supported by evidence.

20. Evidence gathered appears to support that [REDACTED] was subjected to corporal punishment, and or discipline that is unreasonable in the circumstances, in that, his hands tied by an educator to teach him not to put his hands down his pants, contravening section 166(1) of the *Law*, and giving rise to a contravention of 167(1) of the *Law*.
21. 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

22. 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*.
23. 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.
24. 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

25. 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.
26. 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

27. 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*.
28. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.

29. 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.
30. 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>.
31. 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>
32. Should you have any questions about this Show Cause Notice please contact Brian Cropper on
Brian.Cropper@act.gov.au.

Yours Sincerely



Nicole Withers
A/g Assistant Director
Children's Education and Care Assurance
Education and Care, Regulation and Support

08 February 2024