



Ms [REDACTED]
Former Nominated Supervisor
Mawson Out of School Hours Care

Email [REDACTED]

Dear Ms [REDACTED]

Decision to Issue Caution

1. As you are aware, Authorised Officers from the ACT Regulatory Authority (the Authority), also known as Children's Education and Care Assurance, recently conducted an investigation into a suspected offence at Mawson Out of School Hours Care SE-00009687 (the Service) operated by Community Services #1 Incorporated PR-00005865 (the Provider).
2. The suspected offence related to failure to take reasonable precautions to protect children from harm and hazards during 3 August 2020 to 3 September 2020.
3. Web addresses for the *Education and Care Services National Law Act (ACT)* (the Law) and the *Education and Care Services National Regulations 2011* (the Regulations) are provided for your convenience at the end of this decision.

Background

4. On 17 August 2020, the Provider notified the Authority of a series of incidents on 12 August 2020 involving a child [REDACTED] (NOT-40464425). In that notification, the Provider included numerous strategies being pursued, such as training with [REDACTED] observations of triggers, and that parents/guardians had been notified of behaviour to date.
5. On 21 August 2020, the Provider notified the Authority of a further incident involving [REDACTED] during the afternoon of 19 August 2020 (NOT-40465528). In that notification, it was stated that [REDACTED] guardian was notified at the end of the day, and the strategies outlined in NOT-40464425 were referred to.
6. On 2 September 2020, the Provider notified the Authority of a further incident involving [REDACTED] on 1 September 2020 (NOT-40468627).
7. All notified incidents involved escalation of [REDACTED] following an incident, with restraint and/or shadowing used as a strategy.

8. On 8 September 2020, a complaint was received by the Authority regarding the strategies used in the care of [REDACTED] together with other issues regarding lack of communication regarding incidents.
9. Due to the risk of harm when inappropriate behaviour guidance strategies are implemented, the Authority investigated.
10. Throughout the course of the investigation, the Authority obtained further evidence, including documentation and witness statements obtained under section 215 of the *Law*.
11. Such evidence suggested a failure to implement appropriate support for [REDACTED] a child being educated and cared for by the Service, in contravention of section 167(2) of the *Law*.
12. On 15 December 2020, the Authority issued you with a Show Cause Notice (SCN). Refer Attachment A for the SCN. Due to size, attachments to the SCN have not been included with this Administrative Letter but can be provided upon request.
13. On 11 January 2021, you forwarded to the Authority a response to the SCN (Response). Refer Attachment B for the Response. Due to size, attachments to the SCN have not been included with this Administrative Letter but can be provided upon request.

Consideration of Response

Allegation

14. It was alleged that, between 3 August 2020 and 3 September 2020, in contravention of section 167(2) of the *Law*, you, as the Nominated Supervisor, failed to take reasonable precautions to protect a child being educated and cared for by the Service ([REDACTED]) from harm or hazard likely to cause injury, in that there was no support plan in place for the child and the methods of restraint used on a child [REDACTED]

Relevant Legislation

15. The following provision of the *Law* is relevant to the Allegation:

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards

A nominated supervisor 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

Allegation – Evidence and Submissions

16. The Authority's records indicated that you were the nominated supervisor of the Service at the relevant time, having commenced that role on 15 June 2020.
17. Evidence gathered relevant to the Allegation consisted of:
 - a. documentation produced by the Provider under section 215 of the *Law*, including all incident reports involving [REDACTED] for the relevant time period (of which there were two, neither being signed), [REDACTED]'s enrolment record, file and meeting notes, emails, and relevant policies, copies of which were attached to the SCN;
 - b. witness statements obtained voluntarily, under sections 863B and 863C of the *Children and Young People's Act 2008*, and under section 215 of the *Law*. Relevant statement extracts were provided with the SCN.
18. It is noted that the Response included the following documents:
 - a. Witness statement by yourself, given to the Provider on 11 December 2020;
 - b. Emails regarding [REDACTED], both before and after 3 September 2020;
 - c. Notes (mostly undated, but appearing to be before and after 3 September 2020);
 - d. Behaviour Observations during August 2020;
 - e. Strategic Inclusion Plan for the Service, which does not appear to be finalised, as it refers to Binara, another of the Provider's services;
 - f. Certificate for a Behaviour Guidance Webinar dated 16 October 2020; and
 - g. After School Care Return plan for [REDACTED] dated 28 October 2020, after he had been suspended for almost two months.
19. In the Response, you denied the Allegation and submitted that you continuously asked for help to support [REDACTED] looking into inclusion support, and educating yourself regarding behaviour management strategies and children with [REDACTED]. You stated that, when you commenced at the Service, no-one provided information regarding [REDACTED]'s circumstances, background, or underlying causes of his behaviour, that you were forced into a situation blind and there was no support plan in place for [REDACTED] despite him being in attendance for several months prior. You stated that you had never cared for a child with [REDACTED] and began educating yourself.
20. In the notes attached to your Response, there is reference to 22 children with challenging or disruptive behaviours at the Service, together with a reference to "the current needs of [REDACTED] extend beyond current educator capacity and expectations". That is reflected in witness statements obtained by the Authority.
21. You further stated that you have implemented changes such as outdoor free play first, sensory activities, keyboard and headphones for [REDACTED] alternative activities for group

time, and staff have attended training regarding [REDACTED]. The Authority notes, however, that these changes were made after [REDACTED] was suspended.

22. The Authority notes what you have said about attempting to communicate with [REDACTED]'s foster parent, however that does not align with corroborated evidence regarding what information was being passed on to Ms [REDACTED] regarding incidents involving [REDACTED] at the Service.
23. It is noted that you did request [REDACTED]'s support plan from the school, and that there were delays in meetings with [REDACTED]'s Care Team and perhaps some miscommunication between yourself and [REDACTED].
24. You stated that you initially thought [REDACTED] had [REDACTED] and did not know about his [REDACTED] until the school told you, although you were aware that he [REDACTED]. Additionally, the enrolment documentation makes it clear that [REDACTED] is a [REDACTED].
25. You also mentioned in your Response that [REDACTED]'s behaviour appeared to escalate when [REDACTED] commenced working at the Service and that you had concerns about [REDACTED]'s interactions with children. It also appears to have coincided with the extended absence of [REDACTED] and the increase in the number of children attending the Service in Term 3, after the end of COVID-19 restrictions on schools.
26. There seems to be some potential confusion about when [REDACTED] was excluded. In your Response you mentioned him being excluded the day after the incident with [REDACTED] and [REDACTED] on 1 September 2020 (that incident being notified to the Regulatory Authority). Evidence indicates that [REDACTED] was excluded on 3 September 2020 and that there was an additional Ooshie-related incident involving [REDACTED] and [REDACTED] on 2 September 2020.
27. You noted that, in hindsight, there were other things you could have done but, with the knowledge you had at the time and the emotional headspace, you did not think your management of [REDACTED] was inappropriate.
28. Although it is noted that you attempted to obtain a plan for [REDACTED] from other sources (and that has been considered as a mitigating circumstance), as nominated supervisor it was your responsibility, in conjunction with the Provider, to formulate and implement a plan and strategies to ensure [REDACTED] was appropriately educated and cared for. Under Regulation 117C, the minimum requirements for suitability as a Nominated Supervisor are:
 - a. Having attained the age of 18 years;
 - b. Having adequate knowledge and understanding of the provision of education and care for children; and

- c. Having the ability to effectively supervise and manage an education and care service.
29. Evidence gathered further indicates inadequate communication about incidents involving [REDACTED] at the Service, both to the Provider and to [REDACTED] s [REDACTED]. Open communication is particularly important when providing education and care to a child [REDACTED] as that child is very likely to have support needs [REDACTED] than typically required.
 30. Implementing appropriate support strategies and keeping parents and carers fully informed concerning incidents involving their child are a reasonable precaution to take to ensure children are protected from harm.

Allegation – Authority’s Finding

31. For the reasons outlined above, the Authority is satisfied that the following contravention of the *Law* has been substantiated on the balance of probabilities:
 - a. Failing to take reasonable precautions to protect children being educated and cared for by the Service from harm and from any hazard likely to cause injury, between 3 August 2020 and 3 September 2020, in contravention of section 167(2) of the *Law*.

Reasons

32. Because an offence under section 167(2) has been substantiated, it is necessary that the Authority consider what, if any, compliance action is required in order to ensure the health, safety and wellbeing of children is protected.

Obbligations upon Regulatory Authority, Providers, Services and Nominated Supervisors

33. The starting point for the Authority is the *Law*. Section 3 of the *Law* sets out objectives and guiding principles of the *Law*. Relevant to this decision is the objective at section 3(2)(a), namely

‘To ensure the safety, health and wellbeing of children attending education and care services; ...’

34. There are two relevant guiding principles at sections 3(3)(a) and (f), namely:
 - (a) that the rights and best interests of the child are paramount; ...
 - (f) that best practice is expected in the provision of education and care services.
35. Section 260 of the *Law* sets out the functions of the Regulatory Authority, which includes:
 - (c) to monitor and enforce compliance with this Law;

(d) to receive and investigate complaints arising under this Law.

36. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
37. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.

Decision

38. Considering the evidence, the objectives and guiding principles of the *Law*, the fact that you have no previous compliance history, and the mitigating circumstances outlined below, the Authority has decided to issue this Caution rather than statutory compliance action.
39. In making this Decision, the Authority notes that [REDACTED] was in attendance at the Service from the beginning of February 2020 and there was little specific information in his enrolment record regarding his circumstances and education and care needs. The Authority appreciates that you may have been placed in a difficult position with inadequate input from the Provider in formulating appropriate support strategies for [REDACTED] and without staff that had adequate knowledge and skill to support [REDACTED] in the absence of [REDACTED]
40. For these reasons, the Authority will not be taking any statutory compliance action against you. However, this Caution Letter is to emphasise to you, and remind you of, the obligations of a nominated supervisor in ensuring that reasonable precautions are taken to protect all children from harm and hazards. In order to ensure vulnerable children are appropriately supported so as not to cause psychological harm, communication with carers and knowledge of trauma-informed care are essential.
41. The substantiated breach of section 167(2) has been recorded and may be taken into account by the Authority in the event of any further substantiated breaches of the *Law* in the ACT.

Legislation

42. 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>.
43. 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>

44. If you have any questions in relation to this letter, please contact Authorised Officer Tanya Masterman on (02) 6205 2012 or by email at tanya.masterman@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Early Childhood Policy and Regulation
ACT Education Directorate

10 March 2021