



[REDACTED]
[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Proposed Compliance Action

1. The ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, recently investigated an allegation that you inappropriately disciplined a child on 11 February 2021 at Nurture One Holt Children’s Centre SE-40008661 (the Service), operated by G8 Education Limited PR-00000898 (the Provider).
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
3. I am considering compliance action based on a suspected contravention of the Law supported by evidence gathered during the investigation. The compliance action I am considering includes prohibition pursuant to section 182 of the Law.

Grounds for issuing Show Cause for Compliance Action

4. On 12 February 2021, a Notification and Incident (NOT-40510218) was received by the Authority from the Provider. The Notification advised of a dislocation injury sustained by a child, known to be [REDACTED] [REDACTED] (aged two years), while he was moved by you, an educator at the Service. Refer to Attachment A.
5. On 18 February 2021, further information was submitted to the Authority from the Provider advising of the suspension and internal investigation of you, as your actions were alleged to have caused the dislocation to [REDACTED] elbow. Refer Attachment B.
6. Due to the risk of harm to children when subjected to inappropriate discipline and inappropriate interactions, the Authority determined to investigate.
7. I consider that the interaction between yourself and [REDACTED] which resulted in a dislocated elbow for [REDACTED] may constitute inappropriate discipline under section 166(3) of the Law.

8. Under the *Law*, discipline is interpreted as any strategy employed by an educator with the intention of changing a child's behaviour. Discipline that is inappropriate includes any form of physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child, such as (but not restricted to) yelling, using threatening or humiliating language, isolating, or shaming children.

Allegation of Inappropriate Discipline

9. It is alleged that on 11 February 2021, about 9.27am, in the Toddler Room at the Service, in response to ██████████ continuing to swing on an arch resource against your instructions, you inappropriately disciplined ██████████ by pulling, swinging and dragging him by the arm, from the Dinosaur area to a nearby table in contravention of section 166(3) of the *Law*.

Evidence relevant to Allegations

10. On 26 February 2021, the Authority issued the Provider a Notice, allowable under section 215 of the *Law* (215 Notice). The Provider responded on 10 March 2021 with documents including, but not limited to, the following:
- a) Working Directly with Children records for Toddler Room for 11 February 2021;
 - b) Child attendance records for Toddler Room for 11 February 2021; and
 - c) Type written statement of ██████████
- Refer evidentiary documents at Attachment C
11. On 1 March 2021, the Provider submitted to the Authority closed circuit television (CCTV) footage of the conduct as outlined in NOT-40510218. The CCTV Footage, dated Thursday 11 February 2021, identified the following:
- (a) 9:27:45 AEDT Child ██████████ hold rung above seat swinging with no apparent injury.
 - (b) 9:27:46 AEDT educator (██████████) takes hold of, and pulls, ██████████ left hand free from the rung. ██████████ pulls ██████████ by the left hand and wrist from the dinosaur area with ██████████ spinning around facing away from the direction of ██████████ and falling from the seat with full weight on arm being held by both hand of ██████████
 - (c) 9:27:48 ██████████ pulls ██████████ to standing position by left arm.
 - (d) 9:27:51 ██████████ resists ██████████ hold and is pulled by both arms. ██████████ drops to the floor and ██████████ holds both arms. ██████████ swung to standing position by both arms.
 - (e) 9:27:54 ██████████ pulls away from ██████████ and is held by both arms.

- (f) 9:27:54 ■ pulls resisting ■ by left arm toward table and chair. ■ uses right hand to pull at ■'s grip on his left hand/wrist.
- (g) 9:27:57 ■ pulls resisting ■ by left arm to table and chair.
- (h) 9:28:58 ■ continues to hold ■ by left hand as he collapses to floor pulling away.
- (i) 9:28:01 ■ maintains hold of ■ left arm and pulls chair from table. Child lifted into chair by both underarms and seated on chair.
- (j) 9:28:07 Seated ■ appear to be crying facing educator and stands up with chair falling to floor.
- (k) 9:28:15 ■ places arms on table and rests head on arms. Two children in the room turn and look at ■ ■ picks up chair.
- (l) 9:28:17 ■ remains at table with head on hands with two children looking at ■ who move closer.
- (m) 9:28:43 ■ raises head and stand. Appears to still be crying. Third child joins two children with ■ looking at him.
- (n) 9:29:13 Three children kneel and appear to console ■ with one child appearing to pat him.
- (o) 9:29:16 One child, while kneeling appears to be rubbing ■'s left arm.
- (p) 9:29:21 Lead educator [REDACTED] enters the room.

Due to the size of the footage, relevant picture stills are available at [Attachment D](#). Actual footage can be provided upon request.

12. During the process of investigating the Authority obtained a statement from a witness (Witness A) with relevant excerpts as follows:





Law

13. The evidence obtained by the Authority supports a contravention of the following section of the *Law*:

Section 166(3) of the Law - Offence to use inappropriate discipline

A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to—

- (a) any form of corporal punishment; or
- (b) any discipline that is unreasonable in the circumstances.

Contraventions Engaged by Allegation

14. Evidence gathered relevant to the Allegation include documentation supplied under 215 Notice, NOT-40510218, CCTV footage and a witness statement.
15. Relevant evidence gathered appear to indicate that on 11 February 2021, you, whilst in the capacity of an educator of the Service, subjected [REDACTED] to inappropriate discipline, considered unreasonable in the circumstances by pulling, swinging and dragging the child by the arm, from an arch resource to a nearby table resulting in the child sustaining a dislocated elbow.

Potential Compliance Actions

16. Should the allegations be substantiated, statutory compliance actions available to the Authority to consider include an enforceable undertaking or a prohibition notice as set out below:

Section 179A of the Law – Enforceable undertaking

- (1) This section applies-
- a) if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law; or
 - b) in the circumstances set out in section 27(a), 72(a) or 184(3).

- (2) If subsection (1) (a) applies the Regulatory Authority may accept a written undertaking from the person under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this *Law*.
- (3) If subsection (1)(b) applies in relation to a person other than the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the person, under which the person undertakes to take certain actions, or refrain from taking certain actions in relation to an education and care service.

182 Grounds for giving prohibition notice

- (1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed—
 - a) to remain on the education and care service premises; or
 - b) to provide education and care to children.
- (2) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following—
 - b) a nominated supervisor;
 - c) an educator;
 - d) an employee;
 - e) a contractor;
 - f) a volunteer;
- (3) The Regulatory Authority may give a prohibition notice to a person to—
 - a) prohibit the person from being nominated as a nominated supervisor if the Regulatory Authority considers the person is not a fit and proper person to be nominated as a nominated supervisor of a service; or
 - b) impose one or more conditions on the nomination of the person as a nominated supervisor that the Regulatory Authority considers appropriate, if the Regulatory Authority considers the person is a fit and proper person to be nominated as a nominated supervisor of a service subject to those conditions.

Effect of an Enforceable Undertaking

17. Should a decision be made to offer you an enforceable undertaking, under section 179A of the *Law*, and you accept the undertaking, failure to comply with any of its terms after acceptance allows the Authority to apply to the relevant tribunal or court for an order under section 181(2) of the *Law* to enforce the undertaking.

Effect of a Prohibition Notice

18. If, after considering all available evidence and any submission you wish to make, the Authority decides to issue a prohibition notice, while the prohibition notice is in force you must not:
 - (a) provide education and care to children for an education and care service; or
 - (b) be engaged as an educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or
 - (c) carry out any other activity relating to education and care services.

Right of response

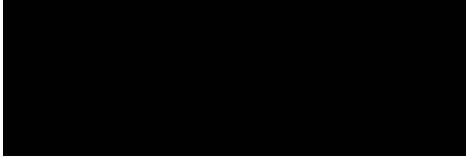
19. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this notice, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
20. At Attachment E to this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission.
21. Please direct your written submission via email to Authorised Officer Brian Cropper at brian.cropper@act.gov.au or by post to:
Brian Cropper, Senior Investigator
Children's Education and Care Assurance
GPO Box 158, CANBERRA ACT 2601

Caution

22. 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 excerpt provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
23. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
24. 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.

25. The Education and Care Services National Law applies to you as a provider and any service you operate. The National 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>.
26. 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>
27. Should you have any questions about this Show Cause Notice please contact Brian Cropper by telephone on (02) 620 71104 or email to brian.cropper@act.gov.au.

Yours sincerely,



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

11 May 2021