



██████████
Person with Management or Control
G8 Education Limited
RE: Nurture One Holt Children's Centre

Email: ██████████
██████████

Dear ██████████,

SHOW CAUSE NOTICE – PROPOSED COMPLIANCE ACTION

1. As you may be aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently investigated an allegation of inappropriate discipline occurring at Nurture One Holt Children's Centre, SE-40008661 (the Service) operated by G8 Education Limited, PR-00000898 (the Provider) on 11 February 2021.
2. Web addresses to the *Education and Care Services National Law Act (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 regarding inappropriate discipline. As a delegate of the Authority, I am considering compliance action under Part 7 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 ██████████ (aged ██████████), while he was moved by 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 the educator, known to be ██████████ ██████████, who is alleged to have caused the dislocation to ██████████'s 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 ██████████ and ██████████ may constitute inappropriate discipline under section 166 of the *Law*, engaging an offence under section 167 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.

Allegations

9. It is alleged that on 11 February 2021, the Provider failed to protect a child enrolled at the Service from harm and hazard, in that [REDACTED] was inappropriately disciplined by [REDACTED] when he would not stop hanging off the arch bars, in contravention of sections 166(1) and 167(1) of the *Law*.

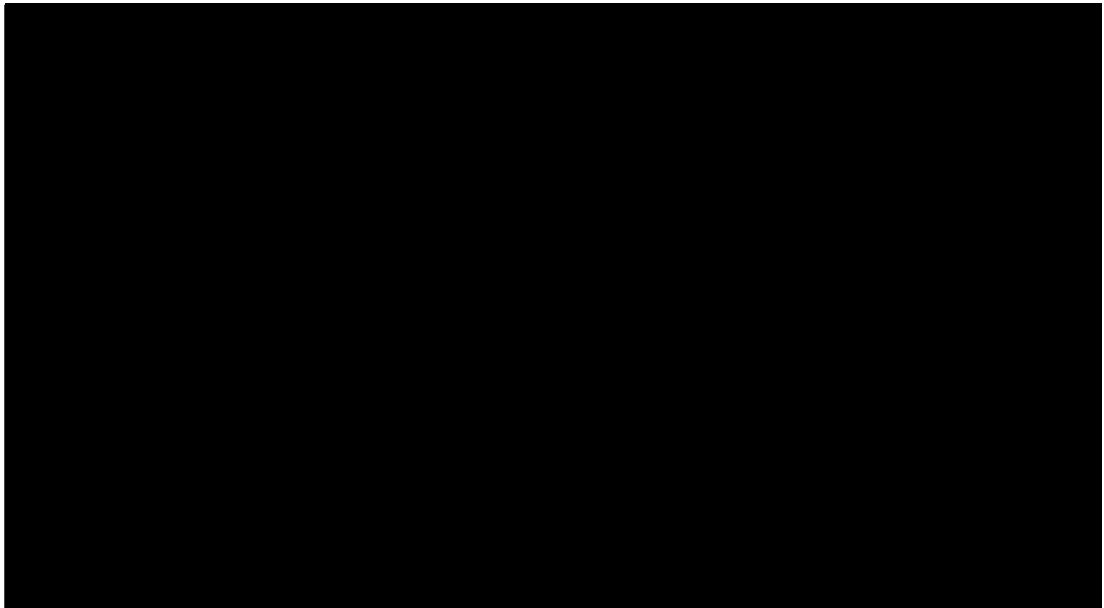
Evidence relevant to the Allegations

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 [REDACTED] for 11 February 2021;
 - b) Child attendance records for [REDACTED] for 11 February 2021; and
 - c) Type written statement of [REDACTED].
- 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 ([REDACTED]) hold rung above seat swinging with no apparent injury.
 - (b) 9:27:46 AEDT educator ([REDACTED]) takes hold of, and pulls, [REDACTED] left hand free from the rung. [REDACTED] pulls [REDACTED] by the left hand and wrist from the dinosaur area with [REDACTED] spinning around facing away from the direction of [REDACTED] and falling from the seat with full weight on arm being held by both hand of [REDACTED].
 - (c) 9:27:48 [REDACTED] pulls [REDACTED] to standing position by left arm.
 - (d) 9:27:51 [REDACTED] resists [REDACTED] hold and is pulled by both arms. [REDACTED] drops to the floor and [REDACTED] holds both arms. [REDACTED] swung to standing position by both arms.
 - (e) 9:27:54 [REDACTED] pulls away from [REDACTED] and is held by both arms.
 - (f) 9:27:54 [REDACTED] pulls resisting [REDACTED] by left arm toward table and chair. [REDACTED] uses right hand to pull at [REDACTED]'s grip on his left hand/wrist.
 - (g) 9:27:57 [REDACTED] pulls resisting [REDACTED] by left arm to table and chair.

- (h) 9:28:58 [redacted] continues to hold [redacted] by left hand as he collapses to floor pulling away.
- (i) 9:28:01 [redacted] maintains hold of [redacted] left arm and pulls chair from table. Child lifted into chair by both underarms and seated on chair.
- (j) 9:28:07 Seated [redacted] appear to be crying facing [redacted] and stands up with chair falling to floor.
- (k) 9:28:15 [redacted] places arms on table and rests head on arms. Two children in the room turn and look at [redacted]. [redacted] picks up chair.
- (l) 9:28:17 [redacted] remains at table with head on hands with two children looking at [redacted] who move closer.
- (m) 9:28:43 [redacted] raises head and stand. Appears to still be crying. Third child joins two children with [redacted] looking at him.
- (n) 9:29:13 Three children kneel and appear to console [redacted], with one child appearing to pat him.
- (o) 9:29:16 One child, while kneeling appears to be rubbing [redacted]'s left arm.
- (p) 9:29:21 Lead educator [redacted] [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. Evidence gathered via the investigation engages the following sections of the *Law* and *Regulations*:

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 the service is subjected to-

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

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.

Regulation 155 - Interactions with children

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 the 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.

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, [REDACTED], 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.
16. Furthermore, evidence gathered appears to support that as the Provider failed to ensure that [REDACTED] was not subjected to inappropriate discipline when interacted with by [REDACTED], the Provider has failed to take reasonable precautions to protect [REDACTED] from harm and hazard likely to cause injury, in contravention of section 166(1) and engaging section 167(1) of the Law.

Right of response

17. You have a right to respond to the allegations set out in this notice. You may, within 14 days of receiving this letter, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
18. 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.

19. 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

20. 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*.
21. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
22. 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.
23. 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>.
24. 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>
25. 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,



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

11 May 2021