

[REDACTED]
Nominated Supervisor
RE: Papilio Early Learning Turner
formerly Sage Education and Childcare.

Email: [REDACTED]

Dear [REDACTED]

Show Cause Notice – Potential Compliance Action

1. I am a delegate of the ACT Regulatory Authority (the Authority), also known as Children’s Education and Care Assurance. 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*.
2. The Authority is currently investigating offences under sections 165(2) and 167(2) of the *Law* occurring at Papilio Early Learning Turner, SE-40007193 (the *Service*) formerly known as Sage Education and Childcare, operated by Affinity Education Group Limited, PR-40001112 (the *Provider*).
3. The Authority’s records indicate that you were the nominated supervisor at the relevant time, having commenced in that role on 8 November 2021 until 10 December 2021.
4. 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.
5. Authorised Officers have now finished obtaining evidence from other sources (unless further lines of enquiry emerge), however, the Authority’s investigation is not complete until you have 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.
6. If substantiated, the allegation/s may constitute offences under sections 165 and 167 of the *Law*. If, after considering all available evidence, the Authority finds any offences are substantiated, it will need to consider whether compliance action is required. All such determinations are made via the Authority’s case management processes, involving a dedicated case management committee.
7. The Authority considers many factors when determining appropriate compliance action, the focus being on ensuring future compliance and improved outcomes for children, rather than punishment. Details of potential compliance actions available to the Authority appear at the end of this Notice.

Grounds for issuing Show Cause Notice

8. The evidence obtained during the investigation support offences under the *Law* within the following areas:
 - a) Failure to ensure all children are adequately supervised at all times; and
 - b) Failure to protect children by taking reasonable precautions.

Background

9. On 30 November 2021, 10 December 2021 and 15 December 2021, the Authority received direct complaints relating to the operation of the Service, and in particular, allegations of inadequate staffing arrangements and inadequate supervision.
10. Specifically, it was alleged that after Affinity Education Group Limited became the Provider of the Service on 8 November 2021, staffing arrangements, that meet ratio requirements, and adequate levels of supervision were not maintained during November and December 2021 within the Service and in particular the Inventors room.
11. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at the Service and a decision was made to investigate suspected offences of inadequate staffing and supervision, raising a failure to take reasonable precautions to protect children from harm and from hazard likely to cause injury.

Allegation:

Allegation – Sections 165 and 167.

12. It is alleged that between 8 November 2021 to 10 December 2021, you, as Nominated Supervisor, failed to ensure adequate supervision of all children being educated and cared for by the Service at all times, specifically, in the Inventors room where educators also supported children requiring extra guidance, in contravention of section 165(2) of the *Law*, engaging a further contravention of section 167(2) of the *Law*.

Legislation Relevant to Allegation

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

Section 165(2) of the *Law* – Offence to inadequately supervise children

A nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: \$10 000

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 care for by the service from harm and from any hazard likely to cause injury.

Penalty: \$10 000

Evidence Relevant to Allegation One

14. On 9 December 2021, a notice allowable under section 215 of the *Law* (215 Notice) was sent to the Provider requiring information and documentation to be forwarded to the Authority. Information and documents submitted in response to the 215 Notice by the Provider, on 29 December 2021, include the following:
 - a) Child Attendance Records 5-30 November 2021 inclusive;
 - b) Working Directly with Children Records 5-30 November 2021 inclusive.
Refer to Attachment A for relevant documents. Working Directly with Children documents are not attached due to size and can be supplied upon request.
15. Furthermore, Authority records indicate that you were the Nominated Supervisor between 8 November 2021 and 10 December 2021. Refer Attachment B.
16. Although a ratio analysis was conducted on working directly with children records and child attendance records for multiple days in November 21, it is noted that incomplete records impeded the accuracy of the analysis. Refer Attachment C for analysis.
17. During the investigation, the Authority obtained numerous witness statements, relevant extracts from which appear below, with personal information redacted where appropriate. Please note that witness statements were obtained utilising powers under section 215 of the *Law*, imposing obligations to attend and provide evidence before the Authority.
18. Relevant extract from Witness A's statement includes the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. Excerpts from Witness B's statement include:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. Excerpts from Witness C's evidence include:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. Excerpts from Witness D's evidence include:

[REDACTED]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[REDACTED]

22. Information and documentation obtained via the investigation process indicate the following:

- a) The Service was educating and caring for children during 8 November-10 December 2021.
- b) Children requiring extra support in the Inventors room at that time are believed to include:

- [REDACTED]
- [REDACTED]
- [REDACTED]

Contraventions Supported by Allegation

23. Evidence gathered appears to support contraventions of sections 165(2) of the *Law*, engaging a further contravention of section 167(2) of said *Law*.

Fitness and Propriety as Nominated Supervisor

24. Regulation 117C provides some guidance on minimum requirements for a nominated supervisor, being that they must:

- a. be over 18 years of age;
- b. have adequate knowledge and understanding of the provision of education and care to children; and
- c. have the ability to effectively supervise and manage an education and care service.

25. The concept of fitness and propriety is not fixed. It is dependent on context and requirements of the particular position and may change over time to meet social and political expectations. At minimum, fitness and propriety includes honesty, knowledge and ability.

26. Nominated supervisors have extensive responsibilities under the *Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *Law* and the *Regulations*.

27. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must be honest, have a deep knowledge and understanding of the National Quality Framework (including compliance responsibilities), and also possess the ability to manage educators and any other staff, service premises and relationships with families.

28. As nominated supervisor during the transition to the current Provider, you were also responsible for the resourcing requirements of the Service to always facilitate the provision of adequate supervision to all children, and support the emotional, developmental and psychological needs of children including those with challenging behaviours.
29. This evidence raises a concern about your ability to manage and supervise an education and care service.
30. The purpose of this Show Cause Notice is to provide you with an opportunity to respond to the evidence outlined above, and to specifically address the point of your fitness and propriety to be a nominated supervisor.

Potential Compliance Action

31. 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 any offences are substantiated and/or the Authority finds that you do not meet the fitness and propriety requirements to be a nominated supervisor. Potential compliance actions are under Part 7 of the *Law*, and include:
 - a. Non-statutory action such as a formal caution letter;
 - b. Enforceable undertaking under section 179A of the *Law*; or
 - c. Prohibition from acting in a role as Nominated Supervisor.
32. Relevant legislation for enforceable undertakings and partial prohibition appears below.
33. An enforceable undertaking may include requirements such as undergoing additional training, having a mentor, advising the Authority of any proposed change in employment.
34. A partial prohibition only applies to the role of nominated supervisor within the education and care sector. It may prevent you from being in a role as nominated supervisor if the Authority finds that you are not fit and proper, or it may place conditions on you being in such a role if you are fit and proper but do not possess all the required skills and knowledge. It is not always permanent, and the partial prohibition must be cancelled by the Authority if it is satisfied that there is not a sufficient reason for the it to remain in force.

Section 179A - Enforceable undertakings

- (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 the approved provider of an education and care service, the Regulatory Authority may accept a written undertaking from the approved provider, under which the approved provider undertakes to take certain actions, or refrain from taking certain actions in relation to the education and care service.
- (4) 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.
- (5) A person may, with the consent of the Regulatory Authority, withdraw or amend an undertaking.
- (6) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.
- (7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

Section 182(3) - Grounds for issuing a prohibition notice

The Regulatory Authority may give a prohibition notice to a person to –

- (a) Prohibit the person from being 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.

Right of response

35. As mentioned previously, this letter is your opportunity to respond to the allegations and evidence set out in this Notice, in addition to the question of fitness and propriety. 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.
36. At Attachment D 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
Attention Brian Cropper
GPO Box 158, Canberra ACT 2601.

Caution

37. I am informing you that the excerpts of statements of witness taken for the purpose of the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation are protected disclosures under section 296 of the *Law*.
38. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
39. 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.
40. The *Law* applies to you as a nominated supervisor and to any service you are engaged at. 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>.
41. 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>
42. Should you have any questions about this Show Cause Notice please contact Senior Investigator, Brian Cropper, on telephone (02) 62071104 or email brian.cropper@act.gov.au.

Yours sincerely



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

9 May 2022