

[REDACTED]
Person with Management and Control
Affinity Education Group Limited
RE: Papilio Early Learning Turner
formerly Sage Education and Childcare.

Email [REDACTED]

Dear [REDACTED],

Show Cause Notice – Potential Compliance Action

1. As you may be aware, the ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, are investigating suspected offences under the *Education and Care Services National Law (ACT)* (the Law) relating to the operation of 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).
2. 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.
3. The Authority has determined that there is sufficient evidence to support a case to answer for the Provider regarding suspected offences under the Law. However, the Authority’s final determinations will not be made until the Provider has had an opportunity to respond to the allegations and evidence obtained by the Authority.
4. 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. The Authority is considering compliance action based on suspected contraventions of the Law and Regulations. If substantiated, the allegations may constitute offences under sections 165(1), 167(1) of the Law and Regulation 177(2) of the Law and Regulations (or any combination of them).
6. If, after considering all available evidence, the Authority finds any offences are substantiated on the balance of probabilities, 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. If any 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. Potential compliance actions 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;
 - b) Failure to protect children by taking reasonable precautions; and
 - c) Failure to maintain prescribed records.

Background to Investigation.

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 Approved Provider of the Service on 8 November 2021, staffing arrangements failed to 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. Due to the risk of children being exposed to harms and hazards because of ratios not being maintained and children being inadequately supervised, the Authority determined to investigate.

Allegations:

Allegation One – Sections 165, 167

It is alleged that between November 2021 and December 2021, the Provider failed to ensure that all children being educated and cared for at the Service, were adequately supervised at all times, specifically, in the Inventors room where educators also supported children requiring extra guidance, contravening s165 (1) of the *Law*, engaging a further contravention of 167(1) of the *Law*.

Allegation Two – Regulation 177(2)

It is alleged that on 10, 12, 23, 26 and 29 November 2021, the Provider failed to take reasonable steps to ensure prescribed records were maintained, specifically, that Working Directly with Children Records were inaccurate, in contravention of *Regulation 177(2)*.

Evidence Relevant to the Allegation One

12. 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:

[Redacted text block]

[Redacted text block]

[Redacted text block]

Refer Attachment B for head count document.

16. Excerpts from Witness C's evidence include:

[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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

Legislation Relevant to Allegation One

Section 165(1) of the Law - Offence to inadequately supervise children

The Approved Provider 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, 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.

Contravention supported by Allegation One

- 19. Evidence gathered appears to support a contravention of section 165(1) of the *Law*, engaging a further contravention of section 167(1) of said *Law*.

Evidence Relevant to the Allegation Two

- 20. A ratio analysis was conducted on working directly with children records and child attendance records for the following days:
 - a) 10 November 2021
 - b) 12 November 2021
 - c) 23 November 2021
 - d) 26 November 2021 and
 - e) 29 November 2021.
- 21. Inaccuracies within the working directly with children records impeded the analysis of the Service ratios “under the roof”. Refer Attachment C for Ratio Analysis.

Legislations Relevant to Allegation Two

Regulation 177 – Prescribed enrolment and other documents to be kept by approved provider

- (1) For the purposes of section 175(1) of the Law, the following documents are prescribed in relation to each education and care service operated by the approved provider –
 - (h) in the case of a centre-based service, a record of educators working directly with children as set out in regulation 151.
- (2) The approved provider of the education and care service must take reasonable steps to ensure the documents referred to in sub regulation (1) are accurate.

Penalty: \$2000

Regulation 151 – Record of educators working directly with children

The approved provider of a centre-based service must keep a record of educators working directly with children that includes the following information:

- (a) The name of each educator who works directly with children being educated and cared for by the service;
- (b) The hours that each educator works directly with children being educated and cared for by the service.

Contravention supported by Allegation

22. Evidence gathered appears to support a contravention of Regulation 177(2).

Potential Compliance Action

23. 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. 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;
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; or
 - d. Conditions on Service Approval under section 55 of the *Law*.
24. 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. A compliance notice requires specific steps to be undertaken by the Provider to demonstrate to the Authority how compliance with the *Law* and *Regulations* will be achieved and maintained. It is tailored in each circumstance to address the specific non-compliance identified because of the investigation.
25. In your response, you may wish to make suggestions as to how this can be demonstrated. The Authority is not bound by any suggestions but will consider them as part of the Authority's

case management process. Alternatively (or additionally), the Authority may place a condition on the Service Approval to address the specific non-compliance identified because of the investigation.

Right of response

26. As mentioned previously, this letter is your 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.
27. 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

28. 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*.
29. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against reprisal.
30. 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.
31. 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>.
32. 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>
33. 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