



Mr [REDACTED]
Person with Management and Control
Affinity Education Group Limited
RE: Papilio Early Learning Turner

Email [REDACTED]

Dear Mr [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 (ACT) (the Law)*, together with receiving and investigating complaints arising under the *Law*.
2. The Authority has recently assessed a Notification of Serious Incident (NOT-40659574) relating to Papilio Early Learning Turner SE-40007193 (the Service), operated by Affinity Education Group PR-40001112 (the Provider), which engages suspected offences being contravened.
3. 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.
4. 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. 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. If substantiated, the allegations may constitute offences under sections 165(1), 167(1) of the *Law*, as well as a breach of *Regulation 177* (or any combination of them). 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.
6. 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

7. The evidence obtained during the assessment of NOT-40659574 supports offences under the *Law* within the following areas:
 - a) Supervision;
 - b) Failure to protect children by taking reasonable precautions; and
 - c) Accuracy of prescribed records.

Background to Notification assessment

8. On 3 March 2022, the Authority received a notification of serious incident from the Provider regarding a two-year-old child, known to be [REDACTED] DOB: [REDACTED] leaving the Service premises unnoticed by educators on 2 March 2022. Refer Attachment A for initial documentation supplied relevant to the notification.
9. On 3 March 2022, additional information was requested from the Provider, which was responded to on 4 and 7 March 2022. Refer relevant correspondence at Attachment B.
10. Additional information submitted included the following:
 - a) Working directly with children records for the whole of Service for 2 March 2022;
 - b) Children's attendance records for the whole of Service for 2 March 2022;
 - c) Map of the Service indicating the relevant fire safety door;
 - d) CCTV footage referred to in the notification.
11. It was determined by the Authority that there were reasonable grounds to suspect that offences have, or may have, occurred at Service, and a decision was made to engage a Show Cause Process for suspected offences under sections 165, 167 and 169 of the *Law*, and *Regulation 177*.

First Set of Grounds – Supervision and Harm

Allegation One – Inadequate Supervision and Harm

12. It is alleged that, on 2 March 2022, the Provider failed to ensure that all children being educated and cared for by the service were adequately supervised at all times that the children are in the care of that service, in that [REDACTED] was able to exit the Service, unnoticed by educators, run out onto a public road and was subsequently returned to the Service by a member of the public, in contravention of section 165(1) of the *Law*, engaging an additional offence under section 167(1) of the *Law*.

Legislation Relevant to Allegation One

Section 165(1) of *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.

Evidence Relevant to Allegation One

13. The very nature of the notification of serious incident submitted by the Provider on 3 March 2022 supports the incident occurring as detailed, therefore supporting the alleged offences under *Law* being contravened.
14. CCTV footage shows [REDACTED] climbing onto a chair, being able to open an exterior door and move in and out of the room and outdoors on multiple occasions, without the educator in the room noticing what was occurring. CCTV footage also shows that [REDACTED] eventually stopped returning back to the room and was seen running up the road outside of the Service which was noticed by a member of the public who then engaged with [REDACTED] at the corner of the street.
15. It was noted that CCTV footage shows the above occurring over a 5minute and 18 second timeframe. During this time, an educator was sitting at a table close to the door that [REDACTED] exited, but with her back towards him, engaged in an activity with another child. Refer CCTV footage via Provider submitted link in email dated 7 March 2022 at Attachment C.
16. The Emergency Evacuation Diagram submitted by the Provider indicates that the door that [REDACTED] exited is an Emergency Exit door which leads out towards McKay Lane and McKay Street in Turner. Furthermore, the diagram indicates that [REDACTED] would have, without guidance or support, needed to descend two flights of stairs to reach ground level with no additional barriers (eg a gate) preventing further access to public roads. Refer Emergency Evacuation Diagram at Attachment D.

Contraventions Supported by Allegation One

17. Evidence gathered appears to support contraventions of section 165(1) of the *Law*, engaging a contravention of s 167(1).

Second Set of Grounds – Accuracy of prescribed records

Allegation Two– Inaccurate prescribed records

18. It is alleged that the Provider failed to take reasonable steps to ensure prescribed working directly with children records, as required under *Regulation 151*, were accurate between 28 February 2022 and 3 March 2022, in breach of *Regulation 177(2)*.

Legislation 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 subregulation (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.

Evidence Relevant to Allegation Two

19. Documentation submitted by the Provider on 4 March 2022 included Working Directly with Children records for all rooms across the service, recording educator movements between dates 28 February 2022 and 3 March 2022. Refer records at Attachment E.
20. Analysis of the documents indicated the following inaccuracies:
 - (a) Nest – 1 March 2022 – no time out recorded for [REDACTED]
 - (b) Creators – 2 March 2022 – no time in recorded for [REDACTED]
 - (c) Explorers - 2 March 2022 – no time out recorded for [REDACTED]
 - (d) Explorers - 3 March 2022 – no time out recorded for [REDACTED]
 - (e) Junior 1 (Adventurers) - 1 March 2022 – no time out recorded for [REDACTED]
 - (f) Junior 1 (Adventurers) - 2 March 2022 –time in and out recorded as 12:30pm for [REDACTED]
 - (g) Inventors – 28 February 2022 – no time out recorded for [REDACTED]
 - (h) Inventors – 1 March 2022 – no time out recorded for ECT [REDACTED] (full name not legible).
 - (i) Inventors – 1 March 2022 – no time out recorded for [REDACTED]

Contravention supported by Allegation Two

21. Evidence gathered appears to support a breach of *Regulation 177(2)*.

Potential Compliance Action

22. The Authority reiterates that no decision has been made at this time – this letter is a step in the assessment 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; or
 - b. Non-statutory Administrative Action with measures to be taken and evidence produced;
or
 - c. A Compliance Notice under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*; and/or
 - d. Amendment of service approval under section 55 of the *Law*, by way of imposing a new condition.
23. 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.

Right of response

24. As mentioned previously, this 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.
25. At Attachment F 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 Janine.fairburn@act.gov.au or by post to:

Children's Education and Care Assurance
Attention Janine Fairburn
GPO Box 158
Canberra ACT 2601.

Caution

26. 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.
27. 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>.

28. 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>
29. Should you have any questions about this Show Cause Notice please contact Authorised Officer Janine Fairburn, on telephone (02) 6205 4390 or email Janine.fairburn@act.gov.au.

Yours sincerely



Clare Brookes
Senior Director
Education and Care Regulation and Support
ACT Education Directorate

25 March 2022