

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

Ema [REDACTED]

Dear Mr [REDACTED]

Decision to Issue Administrative Action

1. As you are aware, the ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently investigated 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. The Authority is satisfied that the Provider was not complying with the provisions of the *Law* and the *Education and Care Services National Regulations* (the *Regulations*) in respect to this matter. Web addresses to the *Law* and associated *Regulations* are provided for your convenience at the end of this Decision.

Facts

3. 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.
4. 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.
5. Throughout the course of the investigation, the Authority obtained evidence from numerous sources, including prescribed records and witness statements obtained under section 215 of the *Law*.
6. On 9 May 2022, because of evidence gathered during the Authority's investigation supporting contraventions of sections 165(1), 167(1) of the *Law* and *Regulation 177(2)*, the Provider was issued with a Show Cause Notice (the Notice). Refer a copy of the Notice at Attachment A. Due

to size, attachments to the Notice have not been included with this Decision but can be provided upon request.

7. The Notice set out the allegations and relevant evidence supporting offences under the Law, allegations were as follows:

Allegation One – Sections 165(1) and 167(1) of the Law

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)*.

8. On 23 May 2022, the Authority received a response to the Notice from the Provider. Refer to a copy of the response at Attachment B. Due to size, attachments to the response have not been included with this Decision but can be provided upon request.

Law

9. The following provisions of the *Law and Regulations* were engaged by the deliberations and decisions:

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.

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 subsection (1) are accurate.

Penalty: \$2000.

Reasons


10. The Authority has carefully considered the Provider's response to the Notice, along with all available evidence, and is satisfied that on the balance of probabilities, there is sufficient weight of evidence to substantiate a contravention of the *Law and Regulations*.
11. The Authority is satisfied that between November and December 2021, the Provider failed to ensure that all children were adequately supervised at all times, contravening section 165(1) of the *Law*, engaging a contravention of section 167(1) of the *Law*.
12. Evidence gathered in the Authority's investigation, include witness statements and documents, corroborating inadequate supervision and support of educators and children, including those children displaying challenging behaviours.
13. The Providers response to the Notice was written in a manner that amounted to an admission of non-compliance with the *Law and Regulations* and included remedial action plans and strategies further supporting the Authority's substantiation of the offences.
14. For supervision levels to be deemed adequate under the *Law*, minimum regulated ratios may need to exceed the number prescribed, to meet the emotional, developmental, and physiological needs of all children, as well as the experience levels of educators, in guiding and supporting children' challenging behaviours and additional needs.
15. Furthermore, the Authority is satisfied that *Regulation 177(2)* has also been breached, on the balance of probabilities.
16. The Provider has indicated that the working directly with children records produced under section 215 of the *Law* were non-compliant, noting that educators failed to record, at times, working directly with children accurately.
17. The Authority acknowledges the existing regulatory action currently being undertaken and notes the additional information produced by the Provider in response to the Notice, regarding plans for corrective action being implemented with respect to the offences, including the following focus areas:
 - a) Inclusion support;
 - b) Behaviour support plans;
 - c) Revisiting training; and
 - d) Accuracy of prescribed records, including review and performance management.

18. The *Law* works to protect a particularly vulnerable part of our society — children — when they are in the care of people other than their parents or guardians. The *Law* authorises providers and services to participate in a regulated environment and requires those participants to comply with the *Law*.
19. A key object of the *Law* is to protect children in the context of education and care services. The Authority looks to exercise its powers to emphasise and require best practice, as the *Law* requires, which is also inherently in the best interests of children.
20. The *Law* outlines a range of statutory actions which may be taken by the Authority in response to non-compliance. Considering the evidence, the objectives and guiding principles of the *Law*, the compliance history of the Service, and the steps taken in implementing a plan for corrective action, the Authority has decided to issue this Administrative Action rather than statutory compliance actions.
21. The Authority is satisfied that the corrective steps taken by the Provider, as outlined, will satisfy the Authority's expectations, and no further action or documentation is required by the Authority regarding this matter.
22. The substantiated breach of section 165(1), 167(1) and *Regulation* 177(2) has been recorded on your file and may be considered by the Authority when assessing any further applications for service approvals in the ACT or in the event of further similar contraventions.

Legislation

23. 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>.
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. If you have any questions in relation to this letter, please contact Authorised Officer Brian Cropper on (02) 6207 1104 or by email at Brian.Cropper@act.gov.au.

Yours sincerely



Janine Fairburn
Assistant Director
Education and Care Regulation and Support
ACT Education Directorate
27 June 2022.