

Ms [REDACTED]

Email: [REDACTED]

Dear Ms [REDACTED]

### Decision to Issue Caution Letter

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. Web addresses for the *Law* and the *Education and Care Services National Regulations 2011* (the *Regulations*) are provided for your convenience at the end of this letter.

### 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 documentation and witness statements obtained under section 215 of the *Law*.
6. On 9 May 2022, because of the evidence gathered during the Authority's investigation supporting contraventions of sections 165(2), 167(2) of the *Law* and *Regulation 177(2)*, a Show Cause Notice (the Notice) was issued to you. 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(2) and 167(2)

It is alleged that between November 2021 and December 2021, that, you, as Nominated Supervisor 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(2) of the Law, engaging a further contravention of 167(2) of the Law.

8. On 31 May 2022, the Authority received a response to the Notice from the Provider inclusive of a response on your behalf. Refer copy of the response at Attachment B. Due to size, attachments to the Notice 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 decision:

#### **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, in the case of an individual  
\$50 000, in any other case.

#### **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, in the case of an individual  
\$50 000, in any other case.

### **Reasons**

10. The Authority is satisfied on the balance of probabilities, that between November and December 2021, that you, as the Nominated Supervisor, failed to ensure that all children were adequately supervised at all times, contravening section 165(2) of the *Law*, engaging a contravention of section 167(2) of the *Law*.
11. Evidence gathered in the Authority's investigation, including witness statements and documents, corroborating inadequate supervision and support of educators, and children, where educator numbers, although meeting ratio requirements, were insufficient to ensure adequate supervision.
12. For supervision levels to be deemed adequate under the *Law*, minimum regulated ratio levels 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.
13. 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

Nominated Supervisors to participate in a regulated environment, requiring those participants to comply with the *Law*.

14. 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.

#### **Decision**

15. Considering the evidence, the objectives and guiding principles of the *Law* and noting your short time as Nominated Supervisor of the Service during the transition to the current Provider, the Authority has decided to issue you a Caution Letter, rather than undertaking any statutory actions.
16. This Caution Letter serves to remind you of your obligations, as a Nominated Supervisor, to ensure that at all times, staffing arrangements meet the needs of all children and to ensure that children are adequately supervised and all times.
17. This decision will be recorded and may be considered by the Authority when assessing any further events of similar nature.

#### **Legislation**

18. 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>.
19. 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>
20. 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](mailto:Brian.Cropper@act.gov.au).

Yours sincerely



Janine Fairburn  
Assistant Director  
Education and Care Regulation and Support  
ACT Education Directorate

27 June 2022