

[REDACTED]
Nominated Supervisor

[REDACTED]
[REDACTED]
RE: Sage Education and Childcare Belconnen

Email: [REDACTED]

Dear [REDACTED],

SHOW CAUSE NOTICE – PROPOSED COMPLIANCE ACTION

1. As you are maybe aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, recently investigated allegations of inadequate supervision occurring at Sage Education and Childcare Belconnen SE-40016571 (the Service) operated by Team Gump Pty Ltd as Trustee for Team Gump Trust PR-40007989 (the Provider)
2. Web addresses to the *Education and Care Services National Law (ACT)* (the Law) and the *Education and Care Services National Regulations* (the Regulations) are provided for your convenience at the end of this notice.
3. If any or all of the allegations are substantiated, I am considering compliance action based on suspected contraventions of the Law relevant to your role as Nominated Supervisor. Contraventions are indicated by evidence gathered during the investigation regarding inadequate supervision and protection of children from harm and hazards.
4. As delegate of the Authority, I would be considering compliance actions available under Part 7 of the Law. This notice invites you to respond to the allegations before any determination is made.

Grounds for issuing Show Cause for Compliance Action

5. On 1 March 2021, the Authority received a direct complaint relating to the operation of the Service and in particular, allegations of injuries to children because of inadequate supervision and failure to take all reasonable precaution to protect children from harms and hazards.
6. Specifically, it was alleged that on 16 February 2021, children were found alone and unsupervised, and that staffing arrangements did not support adequate supervision including children with additional needs requiring extra support.

7. The complaint also alleged that the Provider had received multiple complaints from parents regarding injuries to their children from a child who regularly bites, sometimes severely, and that inadequate support and staff to monitor/guide the child was contributing to the injuries being sustained because of biting.
8. Due to the high risk of children being exposed to harms and hazards when a Service is inadequately staffed and children inadequately supervised or supported, the Authority determined to investigate.
9. The Authority is considering compliance action based on the evidence gathered, that indicate contraventions of the *Law*. Specifically, evidence obtained during the investigation supports the following allegations:

Allegations

Allegation One – Failure to Ensure Adequate Supervision.

10. It is alleged that between February 2021 and April 2021, that you, as the Nominated Supervisor, failed to ensure that children being educated and cared for by the Service were adequately supervised at all times in contravention of section 165(2) of the *Law*, resulting in children including, ██████████ (2:10), ██████████ (4:7) and ██████████ (2:11), being bitten by a peer.

Allegation Two – Failure to Take Reasonable Precautions to Protect from Harm or Hazards.

11. It is alleged between February 2021 and April 2021, that you, as the Nominated supervisor, failed to ensure that every reasonable precaution was taken to protect children being educated and cared for by the service, from harm and any form of hazard likely to cause injury, contravening section 167(2) of the *Law*, in that strategies and supports were not sufficiently implemented to mitigate risk to children from being bitten by a peer, believed to be ██████████.

Legislative Provisions Relevant to Allegations

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

The 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.

Section 167(2) of the *Law* - Offence relating to protection of children from harm and hazards.

The 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.

Evidence Relevant to Allegations One and Two

12. On 18 March 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. On 29 March 2021 the Provider responded to the 215 Notice with submission of prescribed records, including the following information:
- a) Record of responsible person/s at the Service for between 15 February 2021 to 12 March 2021, as required by Regulation 150;
 - b) Behaviour support communications regarding concerns raised, about biting occurring at the Service, by a parent of an enrolled child, [REDACTED]. Refer Attachment A.
 - c) Behaviour support plans in place for children enrolled in the Inventors Room, and advice that there were no similar plans in place for any children enrolled in the Adventurers room. Refer Attachment B.
 - d) Information relating to a gastro outbreak in February 2021, inclusive of notifications and correspondence to relevant parties.
13. On 19 April 2021, the Authority received a Notification (NOT-40530609) from the Provider relating to a parent complaint that their child was bitten by a peer with known behavioural challenges. Refer to Attachment C.
14. On 7 May 2021, a secondary 215 Notice was sent to the Provider requiring additional information and documentation. On 19 May 2021 the Provider responded to the secondary 215 Notice with submission of the following information:
- a) Staff records and contact details for educators working in March and April 2021 in the Creators room.
 - b) Copies of behaviour support plans in place for [REDACTED] in March and April 2021.
 - c) Copies of Service Incident/Illness/Injury reports completed for [REDACTED] for March and April 2021
 - d) Copy of correspondence between Provider and complainant relevant to NOT-40530609 inclusive of all emails, photographs, letters or other documents.
 - e) Copy of recorded complaints to Service/Provider relating to any child behaviour incidents within the Creators room during March 2021 and April 2021 inclusive.
15. Information and documentation submitted by the Provider in response to the 215 Notices indicated that a child, believed to be [REDACTED], was known to bite and pull hair of peers, with complaints and concerns raised by staff and parents after various reported injuries to children. Refer relevant Provider submitted documentation at Attachment D1, Attachment D2 and Attachment D3.
16. Provider records also identify that between February 2021 and April 2021, you were the Nominated Supervisor at the Service. The Provider has advised the Regulatory Authority via the ACECQA NQA ITS that you were nominated supervisor of the Service between 30 July 2019 and 22 April 2021. Refer extract record from ACECQA NQA ITS at Attachment E.
17. During the investigation, the Authority obtained statements from various witnesses with relevant excerpts included below.

18. Relevant excerpts from statement of Witness A are as follows:

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

19. Relevant excerpts from statement of Witness B evidence include:

- [REDACTED]
- [REDACTED]

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

20. Relevant excerpts from statement of Witness C's evidence include:

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

21. Excerpts from statement of Witness D's evidence include:

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

Contraventions Engaged by Allegations

22. Relevant evidence gathered appear to support the following contraventions of the *Law*:
- a) Between February 2021 and April 2021 (inclusive), you as the Nominated Supervisor failed to ensure the adequate supervision of all children being educated and cared for by the Service, , in contravention of section 165(2) of the *Law*, in that children were bitten by a peer; and
 - b) Between February 2021 and April 2021 (inclusive), you as the Nominated Supervisor failed to ensure every reasonable precaution was taken to protect children being educated and cared for by the Service from harm and hazard likely to cause injury, in contravention of section 167(2) of the *Law*, in that strategies were not sufficiently implemented to mitigate risk to children of being bitten by a peer.

Fitness and Propriety as Nominated Supervisor

23. Nominated supervisors have extensive obligations under the *National Law*, relating to the broad areas of supervision, staffing, protection from harm and hazards, and educational programs. Specific obligations are contained in both the *National Law* (for example, section 167(2)) and within the *Regulations*. Accordingly, to be a fit and proper person to be appointed as nominated supervisor, the person must have deep knowledge and understanding of the NQF, together with staff and operational management capability.
24. 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.
25. Under Regulation 117C, the minimum requirements for a nominated supervisor include:

- a) having adequate knowledge and understanding of the provision of education and care to children; and
 - b) have the ability to effectively supervise and manage an education and care service.
26. Witness statements and Provider documents obtained, indicate a concerning lack of response to circumstances posing a risk to the health, safety, and wellbeing of children, particularly with respect to implementing adequate strategies to mitigate risk, and reoccurrence of risk, to children from sustaining injuries as a result of peer biting.
27. This evidence raises questions of fitness and propriety to undertake the role of nominated supervisor. As a delegate of the Authority, I am considering compliance action under Part 7 of the *Law*, including an enforceable undertaking or prohibition from being a nominated supervisor.
28. The purpose of this 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.

Proposed Compliance Action

29. The Authority is proposing compliance action under Part 7 of the *Law*, should the Authority find that the either or both allegations are substantiated on the balance of probabilities. Potential compliance actions include:
- a) Enforceable undertaking under section 179A of the *Law*;
 - b) Prohibition from acting in a role as Nominated Supervisor;
 - c) Non-statutory action (caution).

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.

Regulation 117C – Minimum requirements for a nominated supervisor

For the purposes of section 161A of the *Law*, the prescribed minimum requirements for nomination of a person as a nominated supervisor of an education and care service are that the person must –

- (a) have attained the age of 18 years; and
- (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.

Right of response

30. As you have a right of reply, this notice offers an opportunity for you to respond to the allegations prior to any determination being made. You may, within 14 days of receiving this notice, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
31. Accompanying this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Refer [Attachment F](#).
32. Please direct your written submission via email to brian.cropper@act.gov.au or by post to:
Children's Education and Care Assurance,
Attention Senior Investigator Brian Cropper,
GPO Box 158, Canberra ACT 2601.

Caution

33. I am informing you that the excerpts of witness accounts taken for the Authority's investigation are included in the interests of procedural fairness. The statements taken during the investigation and the excerpts provided for your consideration in the show cause process are protected disclosures under section 296 of the *Law*.
34. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
35. Please be aware that it is an offence under section 295 of the *Law* to provide the Authority with false or misleading information or documents.
36. 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>.
37. The *Law* and *Regulations* can be viewed at:
<http://www.acecqa.gov.au/national-law>, and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653g>
38. Should you have any questions about this Show Cause Notice please contact Brian Cropper on telephone (02) 620 71104 or email brian.cropper@act.gov.au

Yours Sincerely



Clare Brookes
Senior Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

8 September 2021