

[REDACTED]
Nominated Supervisor

RE: Sage Education and Childcare Belconnen

Email: [REDACTED]

Dear [REDACTED],

Decision to Issue Formal Caution

1. As you are aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children's Education and Care Assurance, recently investigated allegations of inadequate staffing and supervision, resulting in injuries to children, 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. The Authority is satisfied that you, whilst in the capacity of Nominated Supervisor, have contravened provisions of the *Education and Care Services National Law (ACT) (the Law)*. However, the Authority has determined that the substantiated contraventions do not warrant action via a Prohibition or an Enforceable Undertaking in this instance.
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 decision.

Facts

4. On 1 March 2021, the Authority received a direct complaint relating to the operation of the Service and in particular, allegations of bite injuries to children resulting from inadequate staffing, supervision, and support of children with challenging behaviours.
5. 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. On 8 September 2021, the Authority issued you a Show Cause Notice (the Notice). Refer to copy of Notice (minus attachments due to size) at Attachment A.
6. The Notice outlined the grounds for issue, and the evidence relied on by the Authority supporting the allegations that between February and April 2021, you, in the capacity as Nominated Supervisor, contravened sections 165(2) and 167(2) of the *Law*.
7. Specifically, the allegations raised via the Notice were:

Allegation One – Failure to Ensure Adequate Supervision.

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, [REDACTED] (2:10), [REDACTED] (4:7) and [REDACTED] (2:11), being bitten by a peer.

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

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 [REDACTED].

8. In addition, the Notice outlined the compliance actions being considered by the Authority, should the allegations be substantiated.
9. On 5 October 2021, noting an extension for your response was agreed to by the Authority, you submitted a response to the Notice to the Authority. Refer to a copy of your response (minus attachments due to size) at Attachment B.

Law

10. The following provisions of the *Law* were engaged by the investigation and this Decision:

Section 165(2) 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.

Section 167(2) 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.

Reasons

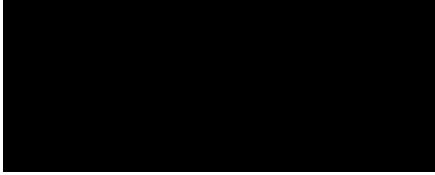
11. The Authority is satisfied, after careful consideration and deliberation of your response to the Notice, and all available evidence, that on the balance of probabilities, there is sufficient evidence to substantiate a contravention of section 165(2) of the *Law*.
12. The Authority is satisfied that between February 2021 and April 2021, you, as the Nominated Supervisor, failed to ensure adequate supervision, resulting in children being bitten by a peer on multiple occasions.
13. However, the Authority was not satisfied, on the balance of probabilities, that you, as Nominated Supervisor contravened Section 167(2) of the *Law* by failing to take every reasonable precaution

to protect children from harm and hazard likely to cause injury in relation to taking steps and implementing strategies to manage and address [REDACTED] behaviours and additional needs.

14. Evidence gathered via the Authority's investigation via witness statements corroborate inadequate supervision and support for children displaying challenging behaviours. The Authority is satisfied that a lack of supervisory support has contributed to multiple children being frequently bitten by their peer, [REDACTED] before educators were able to intervene or prevent the injuries being sustained.
15. Your response to the allegation was noted to focus on the argument that minimum regulated ratio levels were always being met, indicating that you identify meeting minimum ratio requirements as also meeting compliance with provision of adequate supervision.
16. For supervision levels to be deemed adequate under the Law, they must meet the emotional, developmental, and physiological needs of all children, as well as the experience levels of educators to manage challenging behaviours and additional needs.
17. Adequate supervision is not guaranteed by maintaining minimum regulated ratio numbers and may need to be adapted above the minimum to protect children, both physically and psychologically, dependant on the environment that children are being educated and cared for in.
18. Furthermore, the Authority has also taken into consideration that the *Law* has a protective role, and the Authority must consider the rights of children and best practice.
19. In consideration of your response, along with evidence gathered via the investigation, The Authority has decided, on this occasion, not to engage the proposed actions of an Enforceable Undertaking or Prohibition, but instead to issue you this Caution.
20. When choosing to participate in the education and care sector by employment as a Nominated Supervisor, you are obligated to ensure that the operation of the Service meet the professional standards expected under the *Law*. This decision is a reminder of your obligations as a Nominated Supervisor to the health and well-being of all children while being educated and cared for at a Service.
21. This Decision will be recorded on our files and may be taken into consideration if any new evidence is received that warrants further investigation into this matter, or if any other matters involving your conduct with children are notified to the Authority in the future.
22. The Authority deems this matter now closed unless new relevant information is received to warrant additional enquiries to be made.
23. The National Law is made up of an Act and Regulations which can be viewed at:
<http://www.acecqa.gov.au/national-law> and
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653>

24. Should you have any questions about this Decision please contact Senior Investigator Brian Cropper on telephone (02) 6207 1104 or email brian.cropper@act.gov.au.

Yours Sincerely



Janine Fairburn
Assistant Director
Children's Education and Care Assurance
Education and Care Regulation and Support
ACT Education Directorate

28 October 2021