

██████████  
Person with Management or Control  
Team Gump Pty Ltd as Trustee for Team Gump Trust  
RE: Sage Education and Childcare Belconnen

Email ██████████

Dear ██████████,

**SHOW CAUSE NOTICE – PROPOSED COMPLIANCE ACTION**

1. As you may be aware, Authorised Officers from ACT Regulatory Authority (the Authority) also known as Children’s Education and Care Assurance, recently investigated suspected offences 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 all or any of these allegations are substantiated, I will be considering compliance action based on suspected contraventions of the *Law* and *Regulations* indicated by evidence gathered during the investigation relating to inadequate supervision, protection of children from harms and hazards likely to cause injury, failure to notify prescribed matters and inaccurate prescribed records.
4. As delegate of the Authority, I would be considering compliance actions available under Part 7 of the *Law*.

**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 gives grounds to support the following allegations

### **Allegations**

#### Allegation One – Failure to Ensure Adequate Supervision.

10. It is alleged that between February 2021 and April 2021, the Provider failed to ensure that children being educated and cared for by the Service were adequately supervised at all times, in contravention of section 165(1) 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.

11. It is alleged that between February 2021 and April 2021, the Provider 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, in contravention of section 167(1) of the *Law*, in that strategies and supports were not sufficiently implemented to mitigate risk to children from being bitten and interfered with by a peer, believed to be [REDACTED]

#### Allegation Three – Failure to notify certain information to Regulatory Authority.

12. It is alleged that on 17 February 2021, the Provider failed to notify the Regulatory Authority of a complaint alleging that the *Law* had been contravened, in that it was alleged that reasonable steps were not taken to protect [REDACTED], and other children, from being bitten by a peer, in contravention of section 174(2)(b)(ii) of the *Law*.

#### Allegation Four – Failure to notify certain information to Regulatory Authority.

13. It is alleged that between 12 March 2021 and 22 March 2021 inclusive, the Provider failed to notify the Regulatory Authority of a circumstance that posed a risk to the health, safety and wellbeing of a child/children, being an outbreak of gastroenteritis at the Service, in contravention section 174(2)(c) of the *Law*.

#### Allegation Five – Failure to ensure accurate records.

14. It is alleged that between 15 and 19 February 2021 and 9 and 12 March 2021 inclusive, the Provider failed to take reasonable steps to ensure that working directly with children (WDWC)

records complied with Regulation 151, in that times were not accurately recorded, in breach of 177(2) of the *Regulations*.

### **Legislative Provisions Relevant to Allegations**

#### **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.

#### **Section 174(2)(b)(ii) of the Law – Offence of fail to notify of certain information to Regulatory Authority.**

The approved Provider of an education and care service must notify the Regulatory Authority of any complaints alleging that the *Law* has been contravened.

Penalty: \$4000, in the case of an individual  
\$20 000, in any other case.

#### **Section 174(2)(c) of the Law – Offence of fail to notify certain information to Regulatory Authority.**

The approved Provider of an education and care service must notify the Regulatory Authority of any other prescribed matter.

Penalty: \$4000, in the case of an individual  
\$20 000, in any other case.

#### **Regulation 175(2)(c) – Prescribed information to be notified to the Regulatory Authority.**

For the purpose of section 174(2)(c) of the *Law*, the following matters are prescribed-

- c) Any circumstance arising at the service that poses a risk to the health, safety or wellbeing of a child or children attending the service.

#### **Regulation 176(2)(b) & (c) – Time to notify certain information to the regulatory authority.**

- b) In case of a notice under section 174(2)(b) or a notice under referred to in regulation 175(2)(b), within 24 hours of the complaint or incident.
- c) in any other case, within 7 days of the relevant event or within 7 days of the approved provider becoming aware of the relevant information.

**Regulation 151 – Record of educators working directly with children.**

The approved provider of a centre-based service must keep records of 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.

**Regulation 177(2) – Prescribed documents kept by approved provider to be accurate.**

The Approved Provider of an education and care service must take all reasonable steps to ensure that working directly with children records, as set out in regulation 151, are accurate.

Penalty: \$2000

**Evidence Relevant to Allegations One and Two:**

15. 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 the following information:
  - a) Educator/staff records and contact details for all educators working in the Inventors and Adventurers Rooms between 15 February 2021 and 12 March 2021 inclusive, as required by Regulation 147;
  - b) Record of responsible person/s at the Service for between 15 February to 12 March 2021, as required by Regulation 150;
  - c) Child attendance records for all children who attended the Service, as required by Regulation 158, and Working Directly with Children (WDWC) records as required by Regulation 151, for the following dates:
    - 15 February 2021 to 19 February 2021 (inclusive); and
    - 8 March 2021 to 12 March 2021 (inclusive).
  - d) Behaviour support communications regarding concerns raised, about biting occurring at the Service, by a parent of an enrolled child, [REDACTED]. Refer Attachment A.
  - e) 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.
  - f) Information relating to a gastro outbreak in February 2021, inclusive of notifications and correspondence to relevant parties.
  
16. 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.

17. 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.

18. 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.

19. Analysis of records was attempted by the Authority to identify staffing arrangements on the 16 and 18 February 2021 as well as 9,10,11 March 2021, however anomalies and inaccuracies in the WDWC records, as well as inability to identify exact times that educators were WDWC meant that analysis could not be conducted.

20. During the investigation, the Authority obtained statements from various witnesses with relevant excerpts included below.

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

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

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

22. Relevant excerpts from statement of Witness B are as follows:

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

23. Relevant excerpts from statement of Witness C are as follows:



■ [REDACTED]  
[REDACTED]  
[REDACTED]

Contraventions Engaged by Allegations

25. Relevant evidence gathered appear to support the following contraventions of the *Law*:

- a) Between February 2021 and April 2021, the Provider failed to ensure the adequate supervision of all children being educated and cared for by the Service, in contravention of section 165(1) of the *Law*, in that children were bitten by a peer.
- b) Between February 2021 and April 2021, the Provider 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(1) of the *Law*, in that strategies and processes were not sufficiently implemented to mitigate risk to children of being bitten and interfered with by a peer.

**Evidence Relevant to Allegation Three:**

26. Documents obtained pursuant to the secondary 215 Notice included an email complaint dated 16 February 2021, from the parent of children known to be [REDACTED] and [REDACTED] to the Provider inclusive of photos. Refer to Attachment E.

Contraventions Engaged by Allegations

27. Relevant evidence gathered appear to support the following contraventions of the *Law*:

- c) On 17 February 2021, the Provider failed to notify the Regulatory Authority of a complaint alleging that the *Law* had been contravened, in that reasonable steps were not taken to protect [REDACTED] and other children, from being bitten by a peer, contravening section 174(2)(b)(ii) of the *Law*.

**Evidence Relevant to Allegation Four:**

28. [REDACTED]  
■ [REDACTED]  
[REDACTED]  
[REDACTED]

29. Documents furnished under a 215 Notice, also included gastroenteritis outbreak records. Refer to Attachment F.

Contraventions Engaged by Allegations

30. Relevant evidence gathered appear to support the following contraventions of the *Law*:

- d) Between 12 March 2021 and 22 March 2021 inclusive, the Provider failed to notify the Regulatory Authority of an outbreak of gastroenteritis at the Service, contravening section 174 (2) (c) of the *Law*.

**Evidence Relevant to Allegation Five:**

31. The Provider furnished Working Directly with Children documents pursuant to a s215 Notice on the 29 March 2021. Examination of these records indicate times that educators were WDWC, and when they were not, were recorded inaccurately. WDWC identified when educators were WDWC, but many entries were not detailed to indicate exactly when this was or was not occurring. Refer examples from records dated 15 February 2021 at Attachment G.

**Contraventions Engaged by Allegations**

32. Relevant evidence gathered appear to support the following contraventions of the *Law*:
- e) Between 15-19 February 2021 and 9-12 March 2021, the Provider failed to take reasonable steps to ensure that educators working directly with children records, as set out in regulation 151, in that times were not accurately recorded, contravening Regulation 177(2) of the *Education and Care Services Regulations*.

**Proposed Compliance Action**

33. The Authority is proposing compliance action under Part 7 of the *Law*, should the Authority find that any or all the Allegations are substantiated on the balance of probabilities. Potential compliance actions include:
- a) A Compliance Notice allowable under section 177 of the *Law*, if the Authority is satisfied that the Service is not complying with the *Law*.
34. Please be aware that, when considering any appropriate compliance action, the Authority considers the previous compliance history of a Provider and Service.

**Right of response**

35. You have a right to respond to the allegation set out in this notice. This notice offers you that opportunity to respond to the allegations prior to any determination being made. You may, within 21 days of receiving this notice, make a written submission for the Authority's consideration in deciding if a compliance action should be taken.
36. Accompanying this Notice is a '4 Step Guide to Responding to a Show Cause Notice' to assist in the development of your submission. Refer to Attachment H.
37. Please direct your written submission via email to [brian.cropper@act.gov.au](mailto: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**

38. 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*.
39. The *Law* provides, at section 297, for the protection of persons who make protected disclosures from serious detrimental action against them in reprisal.
40. 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.
41. 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>.
42. The *Law* and *Regulations* can be viewed at:  
<http://www.acecqa.gov.au/national-law>, and  
<http://www.legislation.nsw.gov.au/#/view/regulation/2011/653q>
43. 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](mailto: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