

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

Email: [REDACTED]
[REDACTED]

Dear [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 (CECA), recently investigated a Complaint and Notification of Complaint (NOT-40530609), relating to the operation of 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 the Provider has contravened provisions of the *Education and Care Services National Law (ACT)* (the *Law*) and *Education and Care Services Regulations* (the *Regulations*).
3. Web addresses to the *Law* and *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 injuries to children when bitten by a peer because of inadequate supervision and staffing.
5. Due to the seriousness of the allegations and risk of harms to children when a Service is inadequately staffed and children inadequately supervised, the Authority determined to investigate.
6. On 8 September 2021, because of the evidence gathered during the Authority's investigation supporting contraventions of the *Law*, the Authority issued the Provider a Show Cause Notice (the Notice). Refer copy of the Notice (minus attachments due to size-can be provided upon request) at Attachment A.
7. The Notice outlined the grounds for issue, and the evidence relied on, by the Authority supporting contraventions of sections 165(1), 167(1), 174(2) of the *Law* and Regulation 177(2) of the *Regulations*. In addition, the Notice also outlined the compliance actions being considered by the Authority should any offences be substantiated.

8. On 5 October 2021, the Authority received the Providers response to the Notice. The Authority acknowledges that the Provider's reply consisted of an overall response and multiple attachments of evidence to support the written answer to each allegation. Refer to copy of the response (minus attachments due to size-can be provided upon request) at Attachment B.

Allegations

9. **Allegation One** – Failure to Ensure Adequate Supervision.
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.
10. **Allegation Two** – Failure to Take Reasonable Precautions to Protect from Harm or Hazards.
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].
11. **Allegation Three** – Failure to notify certain information to Regulatory Authority.
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 [REDACTED], and other children, from being bitten by a peer, in contravention of section 174(2)(b)(ii) of the *Law*.
12. **Allegation Four** – Failure to notify certain information to Regulatory Authority.
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*.
13. **Allegation Five** – Failure to ensure accurate records.
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*.

Law

14. The following provisions of the *Law* were engaged by deliberations and decision:

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.

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.

Section 174 – Offence to fail to notify certain information to Regulatory Authority

- (2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider –
- (a) any serious incident at the approved education and care service;
 - (b) any complaints alleging –
 - (i) that a serious incident has occurred or is occurring while a child was or is being educated and cared for by the approved education and care service; or
 - (ii) that this Law has been contravened;
 - (c) information in respect of any other prescribed matters
- (4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to:
- (a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates.

Regulation 176(2) – Time to notify certain information to Regulatory Authority

For the purpose of section 174(4) of the *Law*, a notice must be provided:

- (a) in case of a notice under section 174(2)(a)-
 - (i) in the case of the death of a child, as soon as practicable but within 24 hours of the death, or at the time that the person becomes aware of the death; and
 - (ii) in the case of any other serious incident, within 24 hours of the incident or the time that the person becomes aware of the incident;
- (b) in case of a notice under section 174(2)(b) or a notice of a matter 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 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.

Reasons

15. 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*.
16. In relation to Allegation One, the Authority is satisfied that between February and April 2021, the Provider failed to ensure that all children were adequately supervised at all times, contravening section 165(1) of the *Law*, and engaging a contravention of section 167(1) of the *Law*.
17. Evidence gathered in the Authority's investigation via witness statements, corroborate inadequate supervision and support for children displaying challenging behaviours. The Authority is satisfied that this 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.
18. The Provider's response to the allegation was noted to focus on the argument that minimum regulated ratio levels were always being met, indicating that the Provider identifies meeting minimum ratio requirements as also meeting compliance with provision of adequate supervision.
19. 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.
20. 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.
21. Regarding Allegations Two and Three, the Authority was not satisfied, on the balance of probabilities, there was a sufficient weight of evidence to substantiate associated alleged contraventions of the *Law*.
22. Evidence submitted by the Provider in the response to Notice, identified that the Provider was taking reasonable steps to try to manage and support [REDACTED] behaviours via communication with families, obtaining additional sensory resources and some training of staff.
23. Regarding Allegation Four, the Authority is satisfied that 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*.
24. The Authority notes that the Provider did not refute this allegation in their response to the Notice and have advised that they have taken steps to mitigate risk of similar non-compliance in the future.
25. Regarding Allegation Five, the Authority is satisfied that 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 *Regulation 177(2)*.

26. The Authority notes that the Provider did not refute this allegation in their response to the Notice and have advised that they have taken steps to mitigate risk of similar non-compliance in the future.
27. In deciding if compliance action should be taken, the Authority has considered all relevant information supplied by the Provider, including the Provider's actions undertaken to address certain risks associated with peer interactions, and rectify contraventions of 174 of the *Law* (Fail to notify Regulatory Authority) and 177(2) of the *Regulations* (Fail to ensure accurate records).
28. The Authority has determined in this instance, noting the Provider's implemented support for a child with challenging behaviours in April 2021 and actions taken to remedy reporting-record keeping breaches, not to initiate statutory compliance action regarding the substantiated contraventions of *Law* and *Regulations* but rather, issue this Administrative Action to address the non-compliance and that no further action is required.
29. This Decision is intended to remind the Provider, that at all times, supervision levels need to meet the emotional, developmental and physiological needs of children and educators. 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.
30. This Decision will be recorded on your Service file and may be considered in any future applications for approvals, amendments, or waivers. It may also be considered in determining the action to be taken should further breaches of the *Law* or *Regulations* be identified.
31. The Authority deems this matter now closed unless new relevant information is received to warrant additional enquiries to be made.

Legislation

32. 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>.
33. 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>
34. If you have any questions in relation to this Decision, please contact Authorised Officer Brian Cropper by email at 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